STONE | HILTON

July 16, 2023

Lieutenant Governor Dan Patrick

via email

RE: Discovery Dispute

Dear Lieutenant Governor Patrick:

The ink on the Court's discovery order is barely dry, and the House is already violating it. With mere weeks until trial, the House must begin to take its duties and obligations seriously. Although we regret that we need to further involve the Court in ensuring that the House satisfies its basic discovery obligations, we respectfully request that the Court reiterate its July 12, 2023 Discovery Order by mandating full and complete production of documents no later than Wednesday, July 19, 2023, and make clear that further violations of the Court's Orders may result in sanctions.

I. The House's Secrecy and Gamesmanship Continue Unchecked.

The House has conducted its investigation in secret and made every effort to conceal from the public—and the Attorney General—the evidence allegedly supporting the claims against him. Even after the Articles of Impeachment were referred to the Senate, the House continued this tactic, obstructing any effort to obtain their documents and refusing to provide even one shred of legitimate, admissible evidence to the public.

We requested the House's evidence from Rep. Andrew Murr on June 8, 2023, via the Public Information Act. Exhibit A. Rep. Murr responded on June 22, 2023, by turning his nose up at the law and refusing to produce a single document. Exhibit B. The Senate Rules did not provide for a pretrial discovery schedule, but they did grant the Presiding Officer the authority to issue subpoenas. But rather than avail itself of this procedure, the House has continued to use its independent authority (unlawfully, in our view) to continue its secret investigation, all the while refusing to provide any information to the Attorney General.

We next sent a demand for disclosures to the House on July 6, 2023, Exhibit C, followed the next day by a motion for a pretrial scheduling order or pretrial conference, Exhibit D. On July 11, 2023, the House copied the Court on its response to our demand, arguing that "neither the Code [of Criminal Procedure] nor the Michael Morton Act apply" to these proceedings and offering to provide documents only in exchange for an agreement by the Attorney General to also provide documents. Exhibit E. Of course, disclosures *from* the prosecution are required by law and should have been made immediately; disclosures *to* the prosecution are unheard of and anathema to the constitutional rights afforded to every citizen.

Regardless of what pre-dated the Discovery Order, the Court's directive is abundantly clear: the prosecution must turn over all its evidence, as Texas law requires, and the Attorney General is

protected from being compelled to provide evidence, as the Texas and United States Constitutions require.

Counsel for the parties received the Discovery Order at 5:01 PM on July 12th. Counsel for the House promptly thanked the Court for the Order and said that they would be delighted to comply. Less than two hours after receiving the Order, they told the public in a statement that the Order required them "to produce exactly what we intended to produce from the beginning and we are happy to comply."[1] One of the House Managers, Rep. Jeff Leach, said that "[t]he games should end so the evidence can speak" and that he was "happy and eager to comply with this discovery order."[2]

Unfortunately, counsel for the House has been less enthusiastic in actually producing documents to the Attorney General. When the attorneys conferred regarding the Court's Discovery Order, counsel for the House was woefully unprepared to discuss even basic facts about their documents and forthcoming production. *See* Exhibit F. For example, counsel could not say—and still has not said—how many documents they have and exactly when production will be complete, instead committing only that production would be completed "timely" or "sometime next week."

The initial production from the House was not made available until nearly midnight on July 14th, and it was woefully inadequate, constituting a mere six boxes of documents that contained nothing new and nothing of consequence.

But the House's gamesmanship did not stop there. At 10:28 AM on Saturday, July 15th, after already having produced six boxes of documents, counsel for the House raised a new issue that they forgot to mention during the July 13th call: their view that the documents that the House intends to produce are somehow "confidential" and unfit for disclosure to the public. Exhibit G. The House is essentially taking all future productions of documents hostage, refusing to release the documents until the Attorney General makes legally unwarranted concessions and threatening to file a motion with the Court before even one business day has elapsed—unless the Attorney General agrees to the restrictions the House and their counsel are unilaterally attempting to impose on the Discovery Order.

The House made clear this afternoon that it would halt all efforts to produce documents, as ordered by the Senate, until the House and its counsel got their way. Exhibit H at 2 ("Please note that until the issue is resolved either by agreement or as the result of guidance from the Senate, we are unable to produce any additional documents."). They offered no explanation as to why they could not produce *any* documents, as opposed to withholding only those they believe are confidential, but their purpose is clear: delay and obfuscation.

II. The House's Pretextual Confidentiality Concerns Are Misguided.

Counsel for the House pretend that "sensitive personal information" and unnamed confidentiality provisions under "various statutes" require the Attorney General to make further concessions before the House will comply with the Discovery Order. To be clear: the Attorney

[1] https://twitter.com/PatrickSvitek/status/1679273303867813889?s=20
[2] https://twitter.com/leachfortexas/status/1679297659784314881?s=20

General has no interest in disclosing sensitive personal information or irrelevant confidential information to the public. But the House cannot hide behind confidentiality to limit its discovery obligations.

The House's position appears to stem from confusion as to the Court's authority for issuing the Discovery Order. As the Court has made clear, the Discovery Order was issued pursuant to the Lieutenant Governor's authority as the Presiding Officer of this Court to issue any orders "which it may deem essential or conducive to the ends of justice." The House Board of Managers seems to think that the Court relied in part on Texas Code of Criminal Procedure article 39.14, the Texas Public Information Act, and Texas Government Code section 301.020, related to the authority of general investigating committees. But the Court did not cite *any* of these legal authorities in its Discovery Order. The House raises them now only to delay further document production, and its conduct amounts to nothing less than a willful and deliberate disregard of the Court's authority.

Furthermore, the House's argument is utterly inconsistent with its other legal positions. Without explanation, the House has demanded that the Attorney General and his counsel be bound by two subsections of article 39.14 of the Texas Code of Criminal Procedure. *See* Exhibit G. But only four days ago, counsel for the House argued that "neither the Code nor the Michael Morton Act apply." Exhibit E at 1. Similarly, the House invokes confidentiality provisions from the Public Information Act, but the lead House Manager, Rep. Murr, has been thumbing his nose at the Attorney General's PIA request for over a month. Rep. Murr went so far as take the position that the Texas Constitution forbade him from disclosing information under the PIA or following its procedural requirements. *See* Exhibit B at 3. That the House now turns to the PIA for respite from its discovery obligations is surprising, to say the least. Simply put, the House cannot selectively apply state law when it benefits them while ignoring it when they prefer not to comply with the duties and obligations it puts on prosecutors.

To be clear, impeachment is legally characterized as a criminal proceeding under Texas law, and to the extent that the Senate's rules do not conflict with other procedural laws, all of the substantive and procedural protections afforded to criminal defendants by the Texas Constitution and Texas statutory law should likewise be afforded to the Attorney General. The Attorney General has essentially argued as much in his Motion to Preclude his testimony, which the Court should grant without delay. *See* Exhibit I. But the Court has not yet made that ruling, and the Discovery Order contains no exception that limits the House's obligations based on vague references to confidentiality statutes. The House therefore has no basis to selectively invoke provisions of article 39.14.

The House has even less of a basis for invoking the Texas Government Code. Counsel for the House offers no explanation whatsoever as to why it is proper to invoke the Public Information Act in the context of an impeachment proceeding; they ignore the question entirely. Of course, the Court did not order production under the PIA because it has its own authority, and the House Board of Managers, as a litigant before this Court, has no basis whatsoever to ignore the Discovery Order. Similarly, the House's invocation of section 301.020(e) of the Government Code is utterly meritless and amounts to nothing less than a direct challenge to the authority of the Senate to conduct the impeachment trial. That the House is raising its own rules of confidentiality as an excuse for intentional noncompliance with the Court's Discovery Order is telling.

Even if the House's concerns about sensitive personal information and confidentiality had potential merit, the House itself has already clearly indicated that those concerns are not actually present in this matter. Counsel for the House did not raise this concern until *the morning after* it had already produced potentially sensitive information to counsel for the Attorney General. (The Attorney General will provide these documents for *in camera* review upon request.) The House's argument regarding confidentiality is obviously pretextual.

To the extent that the Court has any concerns about the disclosure of a third party's sensitive information, the Attorney General has no intention of publicly disclosing or displaying any irrelevant sensitive personal information without redacting it, and the Attorney General will not disclose irrelevant confidential or protected information (such as health information) to the public. But the House cannot be permitted to shield its evidence—if it has any—from the public eye.

The public has a right to know the basis for the House's impeachment, and the Attorney General has a right to obtain all of the supposed evidence against him without agreeing to potentially onerous and wholly unnecessary protective orders. The Court need not embroil itself in endless litigation over confidentiality designations and motions for protective orders. It is time for the House to present its information to the public.

III. The House's Continued Delays Are Prejudicial and Undermine Due Process.

The Court's Discovery Order is abundantly clear: the Order was effective "immediately" and the House is to produce all its documents "as soon as practicable." The House itself was apparently "eager" to produce these documents and had "intended to produce [them] from the beginning." Yet four days after the Order was issued, the House has only managed to turn over a paucity of inconsequential documents that contain nothing new.

The current trial date is September 5th, 51 days from now, and all pretrial motions are due to be filed on August 5th, 20 days from now. The House has been investigating the Attorney General since March, without ever bringing him into the process and without disclosing a shred of evidence to the public. And the House has disclosed next to nothing since it impeached the Attorney General nearly seven weeks ago. The fact that the Attorney General still does not have all the evidence that will be offered against him is unjust, antithetical to due process, and extremely prejudicial to his defense.

Because the House has given every indication that it will continue its dilatory tactics right up until the eve of trial, the Attorney General respectfully requests that the Court order full and complete disclosure of the House's documents, as required by the Discovery Order, no later than close of business on Wednesday, July 19th, with all supplementation of later-acquired documents to be completed no later than Monday, July 31st. The Court should further order that the House shall not offer into evidence or publish to the jury any documents produced after the supplementation deadline, nor elicit any testimony based on the excluded documents.

IV. Additional Safeguards Are Necessary to Ensure Complete Production.

Counsel for the House has made clear that they intend to exploit any possible ambiguity in the Discovery Order to limit its production to the Attorney General and to the public. Despite their hollow assurances to the public, they have failed to produce a single page of substantial, admissible evidence in support of their claims. If they *do* have any admissible evidence of consequence, it is clear they will do everything they can to conceal it until the latest possible moment.

In order for both the Court and the Attorney General to be assured that the House has fully complied with its discovery obligations, the Attorney General respectfully requests that the Court require that:

1. All "written or recorded witness statements in the possession of the Managers or their agents or the Committee or its agents" shall immediately be provided to the Attorney General, regardless of any claim of work product or any other privilege;

2. The House shall immediately notify the Court and the Attorney General whenever they receive supplemental evidence, shall disclose this evidence to the Attorney General within 48 hours, and shall notify the Court of its compliance with this deadline;

3. The House shall provide a fulsome and complete privilege log that comports with Texas law no later than Thursday, July 20th, for all documents withheld from its production under a claim of work product or any other privilege;

4. The House shall provide custodian information for all documents produced to the Attorney General indicating the original source of the document;

5. The House shall construe any ambiguity in the Discovery Order in favor of disclosure.

With these additional safeguards, the House Board of Managers will be compelled to follow through on their empty claims to the public that they believe in a fair process, and the Court will be able to hold the House accountable if it fails to satisfy its obligations under the Court's orders.

* * * * *

The Attorney General and his counsel remain ready, willing, and able to work out discovery disagreements with the House and their counsel, so it is unfortunate that the House has chosen to conduct its investigation, impeachment, and litigation in secret. The Attorney General respectfully requests the Court to make clear to the House that this proceeding will be conducted in full view of the public and without needless gamesmanship. The gravity of these proceedings require nothing less.

Very truly yours,

/s/ Christopher D. Hilton
Judd E. Stone II
Christopher D. Hilton
STONE | HILTON PLLC
judd.e.stone@proton.me
christopher.d.hilton@proton.me

Counsel for the Attorney General

Enclosures

CC: Patsy Spaw
Chris Sterner
Tony Buzbee
Dan Cogdell
Allison M. Collins
Amy S. Hilton
Kateland R. Jackson
Joseph N. Mazzara
Rusty Hardin
Dick DeGuerin
Lara Hollingsworth

Exhibit A

STONE | HILTON

June 8, 2023

The Honorable Andrew Murr
State Representative
Chair of the House General Investigating Committee
Room E1.308
P.O. Box 2910
Austin, TX 78768

Dear Mr. Murr:

This request is made under the Texas Public Information Act under § 552.001, *et seq.* of the Texas Government Code, which guarantees the public's access to information in the custody of governmental agencies, officers, and employees. The House General Investigating Committee is a governmental body subject to the Act. Tex. Gov't Code § 552.003(1)(A)(i).

The following definitions apply to the terms used in this request.

1) "Attorney General" refers to Warren Kenneth Paxton, Jr.

2) "Committee" refers to the House General Investigating Committee.

3) "Committee member," "House member," or "Senate member" includes a member's staff, chief of staff, employees, agents, contractors, advisors, aides, clerks, and interns, as well as any staff or committee staff assigned to, detailed to, or assisting that member.

4) "Impeachment Proceedings" is used as defined in Tex. Gov't Code § 665.001 and referenced throughout this request to encompass the events surrounding the introduction of Articles of Impeachment against the Attorney General, including any formal or informal confidential investigatory period and any formal or informal discussions regarding an impeachment or investigation at any time, including any that preceded formal impeachment proceedings.

5) "Information" has the broadest meaning possible under the Texas Public Information Act, to include documents and communications. "Documents" encompasses any printed, typewritten or handwritten matter or reproduction thereof of whatever character, or any means of electronic or computerized storage of information, in your possession, custody or control, including without limitation, correspondence, public polls or surveys, memoranda, stenographic or handwritten notes, drafts, transcripts, statements, studies, publications, invoices, ledgers, journals, books, records, accounts, pamphlets, voice recordings, reports, surveys, statistical compilations, work papers, data processing cards, computer tapes or printouts, phone logs, microfiche or microfilm, e-mails, text messages, chats on electronic applications and social media (Teams, Gchat, LinkedIn, Twitter, Facebook, Signal, WhatsApp, Confide, Snapchat, Discord, Proton, TikTok, and other applications), and writings of every kind and character, whether originals or reproductions. "Documents" also includes any photographs, video and/or DVD recordings, and/or other audio or video recordings or other visual depictions. "Documents" also includes every copy where such copy is not an identical reproduction of the original or where such copy contains any commentary,

marginal comment or notation whatsoever that does not appear in the original, as well as any other tangible record of any kind. "Communications" encompasses the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) in any way memorialized and capable of production.

6) "Investigators" means Erin Epley, Terese Buess, Mark Donnelly, Donna Cameron, Brian Benken, and their agents, employees, representatives, or anyone who aided in the alleged investigation by the Committee into the Attorney General.

7) "Matter A" denotes the Committee's alleged investigation into the Attorney General, as defined by the Committee.

8) The term "or" shall mean "and" and vice versa, as necessary to bring within the scope of the requests all information or documents that would be excluded absent this definition.

Please produce complete copies of the following information.

1) All Information and Documents received, sent, or pertaining in any way to the Attorney General during the 88th Legislative session. This request includes, but is not limited to, Information related to Matter A and the Impeachment Proceedings.

2) All Information and Documents, including emails, text messages, chats, or other electronic or written communications, phone logs, or other correspondence created by, received by, or relied upon by Committee Members or their staff while drafting, preparing, reviewing, editing, and revising the Articles of Impeachment.

3) All drafts of the Articles of Impeachment written, prepared, reviewed, edited, or considered by members of the Committee, Investigators, the House, and staff of all the aforementioned individuals and entities.

4) All drafts of resolutions related to Matter A and the Impeachment Proceedings written, prepared, reviewed, or edited by any House Committee, including the General Investigative Committee.

5) All drafts of resolutions related to Matter A and the Impeachment Proceedings submitted to any House Committee, including the General Investigative Committee.

6) All drafts of resolutions related to Matter A and the Impeachment Proceedings written, prepared, reviewed, or edited by the House of Representatives, whether or not such resolution accompanied the Articles of Impeachment.

7) All drafts of resolutions related to Matter A and the Impeachment Proceedings submitted by the House of Representatives, whether or not such resolution accompanied the Articles of Impeachment.

8) All drafts of resolutions, documents and final documents relied upon by any person in the commencement of Matter A or the Impeachment Proceedings.

9) All Information and Documents referenced or related to the Investigators' presentations to the Committee, including all materials, Documents, or Information the Investigators prepared or relied upon in reaching their opinions and conclusions.

10) All Information, Documents, and communications of any Committee member or Investigator and any Senate Committee or House Committee related to the Attorney General, Matter A, or the Impeachment Proceedings.

11) All Information, Documents, and communications of any Committee member or Investigator and any Senate member related to the Attorney General, Matter A, or the Impeachment Proceedings.

12) All Information, Documents, and communications of any Committee member or Investigator and the Lieutenant Governor (including his agents, employees, staff, aides, clerks, and interns) related to the Attorney General, Matter A, or the Impeachment Proceedings.

13) All Information, Documents, and communications of any Committee member or Investigator and the Governor (including his agents, employees, staff, aides, clerks, and interns) related to the Attorney General, Matter A, or the Impeachment Proceedings.

14) All Information, Documents, or communication of any Committee member or Investigator referencing "Angela" or "Angela Paxton;" "Laura" or "Laura Olson;" "Ken" or "Ken Paxton" or "Paxton" or "Attorney General Paxton" or "General Paxton," as well as any Information or communication referring to those individuals through any abbreviations (*e.g.*, "the AG"), initialisms (*e.g.*, "KP"), or nicknames of any sort.

15) All Information, Documents, or communication of any Committee member or Investigator referencing a "mistress," "girlfriend," or "affair."

16) Each Committee member and Investigator's calendar, journals, notebooks, and notes from January 2023 to present.

17) All Information and Documents, including emails, text messages, chats, or other electronic or written communications, phone logs, or other correspondence between the Investigators and: any of the Investigators' agents or personnel; any Committee members; any House members; any Senate members; any witnesses pertaining to the Investigators' work on Matter A or the Impeachment Proceedings; and any other person related to Matter A or the Impeachment Proceedings.

18) All Information and Documents, including emails, text messages, chats, or other electronic or written communications, phone logs, or other correspondence by any Committee Member and: any of the Investigators; any other Committee Member; any House Member; any Senate Member; any witness pertaining to the Investigators' work on Matter A or the Impeachment Proceedings; and any other person related to Matter A or the Impeachment Proceedings.

19) Any and all Information related to the Impeachment Proceedings or Matter A, including but not limited to:

    a) Recordings or transcripts of recordings of any communications that include any House member or House member staff;

    b) Records, notes, or other Documents made, received, or kept by Committee members recounting anything related to the Impeachment Proceedings or Matter A, including all Documents and Information sent to or received by third parties;

c) Emails, text messages, chats, or other electronic or written and oral communications, phone logs, or other correspondence, records, or Documents exchanged or shared between Committee members and the Investigators;

d) Emails, text messages, chats, or other electronic or written and oral communications, phone logs, or other correspondence, records, or Documents exchanged or shared between Committee members and any contractor related to Matter A or the Impeachment Proceedings;

e) Emails, text messages, chats, or other electronic or written and oral communications, phone logs, or other correspondence, records, or Documents exchanged or shared between Committee members and any third party related to Matter A or the Impeachment Proceedings; and

f) Copies of any contracts or agreements the Committee has with any agent, investigator, or other person who aided in the Impeachment Proceedings or Matter A.

20) All Documents and Information in the possession, custody, or control of any of the Investigators or Committee members related to Matter A or the Impeachment Proceedings.

21) All Documents and Information, including transcripts, statements, records, memoranda, reports, typed and handwritten notes related to Matter A or the Impeachment Proceedings, in the possession, custody, or control of any employee of the House of Representatives.

22) All Documents and Information related to presenting any resolution and the proposed Articles of Impeachment to the House.

23) All Documents and Information regarding the Committee's recruitment and hiring of each Investigator, including all emails, text messages, chats, and other electronic or written communications, phone logs, or other correspondence between any Committee member or their staff and each Investigator.

24) Complete copies of each Investigators' employee file, including all Information and Documents reflecting the Committee's decision to retain each Investigator.

25) All Information and Documents drafted, prepared, edited, commented on, or reviewed by any Investigator in relation to Matter A or the Impeachment Proceedings, including all draft and final documents.

26) All Information and Documents related to or reflecting all meetings (whether in-person, over the phone, or via video chat) involving the Investigators and any witness or person related to Matter A or the Impeachment Proceedings. This request specifically includes all Documents and Information related to or reflecting attempts to contact any person or entity about Matter A or the Impeachment Proceedings, whether or not a response was received.

27) All Information and Documents related to meetings (whether over the phone, in-person, or via video chat) concerning Matter A or the Impeachment Proceedings between any Committee members and any Investigator, witness, or other person.

28) All Information and Documents shared to, from, or between any Committee member or Investigator regarding or related to Dick DeGuerin or Rusty Hardin.

29) All Information and Documents that were reviewed, collected, or created by Dick DeGuerin or Rusty Hardin related to Matter A or the Impeachment Proceedings.

30) All Information and Documents, including records, draft and final documents, memoranda, interim or final reports from any Investigator provided to any Committee member, Dick DeGuerin, Rusty Hardin, or any other person related to Matter A or the Impeachment Proceedings.

31) All Information and Documents, including records, draft and final documents, memoranda, interim or final reports drafted, prepared by, relied upon, or shared between Committee members or their staff regarding or related to the Investigators, Rusty Hardin, Dick DeGuerin, or any other person having knowledge of Matter A or the Impeachment Proceedings.

32) All Information, including records, draft and final documents, memoranda, interim or final reports drafted, prepared by, or relied upon by Committee members or their staff that was provided to or received from any House member or their staff.

33) All Documents and Information related to any investigation related in any way to Matter A or the Impeachment Proceedings.

34) Any and all files, records, draft and final documents, memoranda, and interim or final reports related to Matter A or the Impeachment Proceedings.

35) All Information and Documents sent to or received by any of the following persons and entities related to Matter A or the Impeachment Proceedings, including any attempt to contact any of the following persons or entities, whether or not a response was received:

a) Natin (Nate) Paul, his attorneys, or any person or entity associated with Paul;

b) World Class Holdings, including any related entity, employee, representative, or agent of same;

c) The Mitte Foundation, including and any employee, representative, or agent of same;

d) The Securities and Exchange Commission, and any employee, representative, or agent of same;

e) The U.S. Department of Justice and any employee, representative, or agent of same;

f) The U.S Attorney's Office for the Western District of Texas and any employee, representative, or agent of same;

g) The Texas State Securities Board, and any employee, representative, or agent of same;

h) The Texas Ethics Commission and any employee, representative, or agent of same;

i) The Federal Bureau of Investigation, and any employee, representative, or agent of same;

j) The Texas Department of Public Safety, and any employee, representative, or agent of same;

k) Travis County Sheriff's Department, and any employee, representative, or agent of same;

l) Harris County District Clerk's Office, and any employee, representative, or agent of same;

m) Collin County District Clerk's Office, and any employee, representative, or agent of same;

n) Kaufman County District Attorney's Office, and any employee, representative, or agent of same;

o) Austin Police Department, and any employee, representative, or agent of same;

p) The Texas Office of the Attorney General, and any employee, representative, or agent of same.

36) All Information and Documents related to subpoenas or information requests issued by the Committee related to Matter A or the Impeachment Proceedings, including all drafts and final copies of same.

37) All Information and Documents related to the Committee's rules, including drafts and final copies of same.

38) All Information and Documents regarding communication with any attorneys or advisors other than Dick DeGuerin and Rusty Hardin regarding the Attorney General, Matter A, or the Impeachment Proceedings, regardless of whether a response was received.

39) All Information and Documents a Committee member or Investigator provided to, received from, exchanged with, or any communications with any advisor or consultant, including without limitation a media consultant, public relations consultant, lobbyist, communications specialist, political consultant, campaign, political action committee, or any of their employees, agents, contractors, assistants, advisors, clerks, or interns.

40) Any and all Information a Committee member or Investigator provided to, received from, or exchanged with any reporter, journalist, broadcaster, or other individual associated with any form of media, including without limitation television, newspaper, social media, and radio, related to the Attorney General, Matter A, or the Impeachment Proceedings.

41) Any and all Information a Committee member or Investigator provided to, received from or exchanged with any organizations or associations, whether for-profit, non-profit, charitable, special interest, lobbying groups, or legal associations, related to the Attorney General, Matter A, or the Impeachment Proceedings.

42) All Information and Documents related to the expenses, mileage, per diem, and travel by any Committee Member or Investigator related to Matter A or the Impeachment Proceedings.

43) All Documents and Information provided to the Harris County District Attorney's Office related to Matter A or the Impeachment Proceedings by any Committee member, Investigator, or any other person employed by or under the control of the House of Representatives.

44) All Documents and Information related to Matter A or the Impeachment Proceedings that was provided by the Harris County District Attorney's Office to any Committee member, Investigator, or other person employed by or under the control of the House of Representatives.

45) All Information and Documents, including emails, text messages, chats, or other electronic or written and oral communications, phone logs, or other correspondence, records, or documents shared by any Special Prosecutor *pro tem* with Committee members, House members, or Investigators related to the proceedings in *State v. Paxton*.

46) All Information and Documents related to the Committee, Committee members, and Investigators' document retention policies.

47) Any and all Information about the Committee, Committee members, and Investigators' deletion logs from January 2023 to the present.

48) Information and Documents provided by the Travis County District Attorney's Office, Bailey Molnar, Don Clemmer, Melinda "Mindy" Montford, and Amy Meredith to any Committee member, Investigator, or any other person related to Matter A or the Impeachment Proceedings.

49) Any and all Information and Documents relating to the negotiation and execution of any contract to pay Investigators for work performed for the Committee. This request includes, but is not limited to, any fee agreement and accounting documents indicating the amounts paid and accounts deliverable, as well as any and all Documents that you have used or intend to use to calculate payments to the Investigators.

50) Any and all Information and Documents between you and any Contractor, Company, family member, or other third party regarding the Attorney General, Matter A, or the Impeachment Proceedings.

51) Any and all Information, communication, and Documents now or at any time within the Committee's possession to, from, related to, regarding, or concerning the following individuals:

1. Ryan Vassar
2. Jeffrey Mateer
3. Mark Penley
4. Blake Brickman
5. Lacey Mase
6. Darren McCarty
7. Ryan Bangert
8. David Maxwell
9. Don Clemmer
10. Laura Olson
11. Lesley French
12. Brent Webster
13. Brandon Cammack
14. Nate Paul
15. Narsimha Raju Sagiraju (aka Raj Kumar)
16. Amy Meredith
17. Baily Molnar
18. Johnny Sutton
19. Erin Mitchell
20. Les St. James
21. Dee Raiborne
22. Rani Saaban
23. Neeraj Gupta
24. Major Robert Sunley
25. Jason Anderson
26. Shannon Najmabadi
27. Bryan Hughes
28. George Lane
29. Dade Phelan
30. Amy Gonzales
31. Joshua Godbey

32. Justin Gordon
33. Ray Chester
34. Jeremy Stoler
35. Dorsey Bryan Hardeman
36. William Bryan Hardeman
37. Christopher L. Dodson
38. Stephen Benesh
39. Stephen Lemmon
40. Lisa Tate
41. Jason Cohen
42. Mark Riley
43. Justin Bayne
44. Jim Davis
45. Shelli Gustafson
46. Tony M. Davis
47. Ray Chester
48. Gregory Milligan
49. Mark Lane
50. Dilum Chandrasoma
51. Alan Nalle
52. Tina McLeod
53. Austin Kinghorn
54. Ryan Fisher
55. Aaron Reitz
56. Veronica Segovia
57. Michelle Smith
58. Michelle Price
59. Tom Taylor
60. Henry De La Garza
61. Greg Simpson
62. Michael Wynne
63. Drew Wicker
64. Joseph Brown
65. Katherine Cary
66. Joseph Larsen
67. Christopher "Chris" Hilton
68. Erin Epley
69. Terese Buess
70. Mark Donnelly
71. Donna Cameron
72. Brian Benken
73. Bill Mapp
74. Brian Wice
75. Byron Cook
76. Caleb White
77. Charles A. Loper, III.
78. Cynthia Meyer
79. Freddie Henry
80. Frederick Mowery

81. James Henry
82. Jeffory Blackard
83. Joel Hochberg
84. Ken Paxton
85. Kent Schaffer
86. Mike Buster
87. Nicole DeBorde
88. Dick Weekley
89. Dick Trabulsi
90. Lee Parsley

In the event you determine that a release of a specific record may contain confidential or private information or otherwise seek to withhold information, you have a duty to ask for the opinion of the Attorney General pursuant to Texas Government Code, § 552.301(a).

These records are being sought for a public purpose. To keep costs and copying to a minimum, please provide copies of all responsive records in electronic format if available.

Regards,

/s/ Christopher D. Hilton
Judd E. Stone II
Christopher D. Hilton
judd.e.stone@proton.me
christopher.d.hilton@proton.me

Counsel for the Attorney General

CC: Tony Buzbee
Dan Cogdell

Exhibit B

ANDREW MURR
CHAIR

ANN JOHNSON
VICE CHAIR

COMMITTEE ON GENERAL INVESTIGATING

HOUSE OF REPRESENTATIVES

June 22, 2023

Mr. Christopher D. Hilton
Mr. Judd E. Stone II
Stone Hilton PLLC

Via Email: judd.e.stone@proton.me; chistopher.d.hilton@proton.me

Dear Mr. Hilton and Mr. Stone:

The committee received your request made under the Public Information Act dated June 8, 2023. Your ten-page request seeks fifty-one separate sets of information, all of which are related to Attorney General Ken Paxton, impeachment proceedings in the House, and investigations conducted by the House Committee on General Investigating.

Responsive documents, if any, are being withheld under Section 301.020(e), Government Code, and House Rule 3, Section 13(b-8). Under Section 301.020(e), Government Code, "[i]Information held by a general investigating committee is confidential and not subject to public disclosure except as provided by the rules of the house establishing the committee." Under House Rule 3, Section 13(b-8), information held by the committee "is confidential and not subject to disclosure" if it is "information . . . that if held by a law enforcement agency or prosecutor would be excepted from [disclosure] under Section 552.108," Government Code.

The Open Records Division of the Office of the Attorney General has concluded that information confidential under Section 301.020(e) "must be withheld" in response to a public information request. *E.g.,* Tex. Atty. Gen. ORD-30923 (2019). The only other House rule related to committee information--Section 9.03, Housekeeping Resolution--governs confidentiality of information related to complaints of inappropriate workplace conduct and is not applicable here.

In addition to the protections afforded under Chapter 301 of the Government Code, some of the information covered by your request would also be confidential under the provisions in Chapter 306. Sections 306.003 and 306.004, Government Code, establish that information regarding private citizens of Texas who have communicated with this office is confidential and not subject to public information laws. The protections provided by these provisions of Chapter 306, Government Code, encourage Texas residents to communicate their thoughts and ideas freely with members of the legislature without fear of intimidation or the unintended public release of personal information. Section 306.008, Government Code, makes confidential legislatively privileged communications and exists, in part, to preserve the legislative branch's independence under the fundamental principal of separation of powers, as guaranteed by Article II and Section

MEMBERS: CHARLIE GEREN • OSCAR LONGORIA • DAVID SPILLER
MAILING ADDRESS: POST OFFICE BOX 2910 • AUSTIN, TEXAS 78768-2910 • (512) 463-0780

21, Article III of the Texas Constitution. Chapter 306 contains provisions for the disclosure of the information it covers and sets the parameters for public access to that information. The Attorney General has previously determined that Chapter 306, rather than Chapter 552, the "Texas Public Information Act," governs the release of information covered by its sections. Tex. Atty. Gen. ORD-648 (1996).

You assert that, upon a determination to withhold information on the basis of that record containing confidential or private information, a duty exists to seek a decision from the Office of Attorney General.

As you know, the duty of a governmental body to seek a decision as to whether information may be withheld only exists when a governmental body seeks to withhold public information according to an exception under Subchapter C, Chapter 552, Government Code. Tex. Govt. Code § 552.301(a); *see also Conely v. Peck*, 929 S.W.2d 630, 632 (Tex. App.—Austin 1996, no writ).

Thus, a request as to whether this information may be withheld is unnecessary, as the Public Information Act plainly provides that this information is confidential and not subject to disclosure without reliance on Subchapter C. Statutes governing specific subsets of information, for example, Chapter 301 and 306 of the Government Code, prevail over the general applicability of the Texas Public Information Act. *See* Tex. Atty. Gen. ORD-598 (1991) (interpreting Chapter 552's predecessor, the Open Records Act). The Act prohibits the disclosure of confidential information in Subchapters A and B, and Section 552.352 provides criminal penalties for governmental bodies that disclose information considered confidential under the terms of Chapter 552. The section applies to information made confidential by law, underscoring the intent of the Legislature that confidential information remain as such. Tex. Atty. Gen. ORD-490 (1988).

Where certain information may be released by governmental entities on a voluntary basis, that disclosure is expressly prohibited for information confidential under law. Tex. Gov't Code §552.007(a). Previous open records decisions by the Office of the Attorney General have made clear the point that confidentiality provisions in state statute prohibit the public disclosure of information designated as such. *See* Tex. Atty. Gen. ORD-490 at 4 (1988). Governmental compliance with confidentiality laws is mandatory, and their protections may not be waived by governmental entities or released on a discretionary basis. *See In re City of Georgetown,* 53 S.W.3d 328, 340 (Tex. 2001) (Abbott, J. dissenting); Govt. Code, § 552.007(a). To require this committee to seek an Attorney General opinion as to whether the information expressly made confidential by state statute is subject to withholding under Subchapter C, Chapter 552, Government Code would constitute such a waiver.

ANDREW MURR
CHAIR

ANN JOHNSON
VICE CHAIR

COMMITTEE ON GENERAL INVESTIGATING

HOUSE OF REPRESENTATIVES

The committee also declines to request a decision from the Open Records Division of the Office of the Attorney General under Section 552.301, Government Code, because such a request would violate the Texas separation of powers requirement by impermissibly allowing an executive branch officer to enjoy undue interference in the legislative branch's constitutional authority to impeach and to investigate.

Undue interference in the open records context occurs when a request for information by a member of one branch "unduly interferes with the . . . effective exercise of [a] constitutionally delegated power" by another. Tex. Atty. Gen. ORD-2184 at 3 (2008); *see Tex. Commn. on Envtl. Quality v. Abbott*, 311 S.W.3d 663, 672-673 (Tex. App.—Austin 2010, pet. denied). The Texas Constitution specially vests the power of impeachment in the House of Representatives. Tex. Const. art. XV, § 1. The House Rules of Procedure specifically vest the authority to recommend articles of impeachment in the Committee. H. Rule 3, § 13(c). Moreover, your request relates to the House's exercise of its constitutional authority to conduct investigations. "Authority to pursue investigations and inquiries has long been regarded as an incident of full legislative power." *Tex. Commn. on Envtl. Quality v. Abbott*, 311 S.W.3d 663, 671 (Tex. App.—Austin 2010, pet. denied) (citing *Terrell v. King*, 118 Tex. 237, 14 S.W.2d 786, 790 (1929). That is, Article III's vesting of the legislative power includes the power to investigate and inquire. *Terrell*, 14 S.W.2d at 789-790. The requested information, therefore, relates to the House's exercise of core functions textually committed to it by the Texas Constitution.

Under the facts and circumstances surrounding your request, a legislative committee is exercising constitutional powers committed solely to the legislative branch. Permitting a state statute or an executive branch officer to decide a right of access on its face interferes with the exercise of the "constitutionally delegated powers" to impeach and investigate. Accordingly, the committee cannot make the requested information available for inspection or as copies, nor would a request for an attorney general decision be appropriate or warranted under the law.

In furnishing this response, the committee has satisfied its duty to respond set forth in Section 552.221, Government Code. If you have questions, please feel free to contact me.

Sincerely,

Andrew Murr

Andrew Murr, Chairman
House Committee on General Investigating

cc: Tony Buzbee, Dan Cogdell

MEMBERS: CHARLIE GEREN • OSCAR LONGORIA • DAVID SPILLER
MAILING ADDRESS: POST OFFICE BOX 2910 • AUSTIN, TEXAS 78768-2910 • (512) 463-0780

Exhibit C

THE SENATE OF THE STATE OF TEXAS
COURT OF IMPEACHMENT

IN THE MATTER OF WARREN KENNETH PAXTON, JR.

DEMAND FOR MANDATORY DISCLOSURES

Attorney General Ken Paxton hereby demands that the Texas House of Representatives' Board of Impeachment Managers produce all materials required to be disclosed under the Michael Morton Act, Tex. Code Crim. Proc. art. 39.14. The Texas Constitution and historical precedent treat impeachment as a criminal proceeding, and Texas law is clear: all materials and evidence relevant to any alleged offense must be disclosed by the prosecution without the necessity of a court order. Accordingly, Attorney General Paxton demands per Article 39.14 that the House Board of Managers produce to his attorneys any and all evidence related to the Articles of Impeachment issued by the Texas House of Representatives within seven calendar days. In other contexts, failure to provide disclosures mandatory under Article 39.14 may require retrial of any counts related to the evidence withheld; in this context, it should require dismissal of any related Articles with prejudice, or, at minimum, an order excluding the introduction of any withheld evidence. *See Hallman v. State*, 647 S.W.3d 805, 843 (Tex. App.—Fort Worth 2022, no pet.); *In re State*, 605 S.W.3d 721, 725–26 (Tex. App.—Houston [1st Dist.] 2020, no pet.).

The Texas Constitution and past Senate practice require that the procedural safeguards applicable to a criminal proceeding apply with equal measure to the impeachment of an elected official. For example, Article I, Section 10 of the Texas Constitution guarantees the "Rights of Accused in Criminal Prosecutions" and describes the rights of an impeached official. Under that

section, impeached officials are excepted *only* from "be[ing] held to answer for a criminal offense [only on] an indictment of a grand jury." Tex. Const. art. I, § 10. All other rights afforded to a criminal defendant are equally afforded to officials in impeachment proceedings. Likewise, both the House and this Court have long recognized that the constitutional safeguards afforded to an accused in a criminal proceeding also apply to the impeachment of an elected official. During the House's investigation of allegations made against Governor Ferguson, a prosecutor for the House attempted to compel the Governor to testify before the House. *See* H. Journal, 35th Cong., 2nd Sess. 160–61, 777–78 (1917); *see also* State of Tex. Senate Rec. of Proc. of the High Ct. of Impeachment on the Trial of Hon. James E. Ferguson, Governor, S. 35, 2nd and 3rd Sess., at 121 (1917). The judge appointed to rule on the admissibility of evidence and testimony ruled that the Governor could not be compelled to provide testimony and expressly declined to adopt the House prosecutor's view that the impeachment proceedings were "not necessarily criminal." H. Journal, 35th Cong., 2nd Sess. at 160–61. The Presiding Officer of the trial of Governor Ferguson likewise recognized, "The weight of authority in the United States and elsewhere . . . is that an impeachment proceeding is a criminal proceeding." State of Tex. Senate Rec. of Proc. of the High Ct. of Impeachment on the Trial of Hon. James E. Ferguson, Governor, S. 35, 2nd and 3rd Sess., at 337 (1917).

The Texas Supreme Court similarly has held that "impeachment proceedings constitute[] a quasi criminal action" and has analogized the House's role in an impeachment proceeding to that of a grand jury. *Ferguson v. Maddox*, 263 S.W. 888, 889–890 (Tex. 1924). The House Managers have similarly maintained that the House functioned as a grand jury assessing criminal charges. *See* 88th Leg., R.S., Journal of the Texas House 5922, 5963, 5967. The Texas Senate has tasked the House Board of Managers and its attorneys with prosecuting the Articles at trial. *E.g.*, Tex. S.

Res. 36, 88th Leg., 1st C.S. (2023), Rules 3, 5(c). The Texas Senate has also issued rules requiring the Attorney General to "answer the said charges of impeachment" and "plead guilty or not guilty to the articles of impeachment preferred against him." *Id.* Rule 5(a); Tex. S. Res. 36, 88th Leg., 1st C.S. (2023). It further contemplates "final judgment of either acquittal or conviction." Tex. S. Res. 36, 88th Leg., 1st C.S. (2023), Rule 30(b). Both the requirement that the Attorney General enter a plea and the commencement of a trial that contemplates "conviction" reiterate the criminal nature of the proceeding. Accordingly, there can be no question that an impeachment is a criminal proceeding—and that the House Board of Managers must comply with the Texas Code of Criminal Procedure to ensure a fair and impartial trial. *See also* Tex. Code Crim. Proc. art. 1.02.

Texas law requires prosecutors to disclose all materials and tangible things "not otherwise privileged that constitute or contain evidence material to any matter involved in the action and that are in the possession, custody, or control of the state or under contract with the state." Tex. Code Crim. Proc. art. 39.14(a). The Texas Court of Criminal Appeals has held that "the word 'material' . . . is synonymous with 'relevant.'" *Watkins v. State*, 619 S.W.3d 265, 290 (Tex. Crim. App. 2021). Further, Texas Code of Criminal Procedure article 39.14(h) requires prosecutors to disclose "any exculpatory, impeachment, or mitigating document, item, or information in the possession, custody, or control of the state." This disclosure obligation is "a free-standing duty" and is unlimited in scope; prosecutors have an ongoing duty to disclose any and all evidence that "*may* be favorable to the defense even if that evidence is not 'material.'" *Watkins v. State*, 619 S.W.3d 265, 277 (Tex. Crim. App. 2021) (emphasis added). The House must therefore produce all information in its possession, custody, or control—or in the possession, custody, or control of any of its committees, attorneys, investigators, employees, contractors, and the House Board of Managers—that is relevant in any way to the Articles of Impeachment. *See also In re State*, 659

S.W.3d 1, 12 n.7 (Tex. App.—El Paso, 2020, no pet.) (holding that the Michael Morton Act requires disclosure of all evidence that is in the "possession, custody, or control of . . . any person under contract with the state").

The House's obligation to disclose and produce this information exists independent of a court order, and the House's duty to disclose all evidence described within article 39.14(h) exists independent of a formal request by the Attorney General. *See Watkins*, 619 S.W. 3d at 277–78; *see also* Tex. Code Crim. Proc. art. 39.14(h). Nevertheless, the Attorney General makes this formal demand for these disclosures because the House Board of Managers has so far failed to provide the Attorney General with any of the documents or testimony allegedly collected during the House's secretive impeachment proceedings.

In Texas, "disclosure [is] the rule and non-disclosure the exception." *Watkins,* 619 S.W.3d at 277. The House Board of Managers is obligated to produce all information related to the Articles of Impeachment. Accordingly, the House Board of Managers' production should include at minimum the following information:

1. All reports and records, including law enforcement reports and records of witness interviews, witness statements, photographs, audio and video recordings, and any other letters, accounts, papers, or information that constitutes or contains evidence relevant to any matter related to the Articles of Impeachment or the Impeachment Proceedings, as defined in Texas Government Code § 665.001, *et seq*.

2. Copies of any expert reports and any business, medical, or governmental records in the possession, custody, or control of the House Board of Managers related in any way to the Articles of Impeachment or the Impeachment Proceedings.

3. All written or recorded statements made by or attributed to the Attorney General.

4. All subpoenas, warrants, or other official process, directed to the Attorney General, his subordinates, or the Office of the Attorney General related to the Articles of Impeachment or the Impeachment Proceedings.

5. Copies of all public records, including all records in the possession, custody, or control of the House Board of Managers, their staff, their investigators, and all individuals who

testified before the House Committee on General Investigating, related to the Articles of Impeachment or the Impeachment Proceedings, including electronic, written, or other communications related to such records.

6. All exculpatory, impeachment, or mitigating documents, items, or information that would tend to negate any element of any Article of Impeachment, or that would tend to reduce the punishment for any Article.

7. Details regarding the existence of any payment or reimbursement or any promise of immunity, leniency, or preferential treatment, or of any offer to provide any of the foregoing made to any witness or prospective witness, to include the General Investigating Committee's investigators who appeared as fact witnesses immediately prior to the House's adoption of the Articles of Impeachment.

8. All materials produced by any person or entity in response to any subpoena issued by the General Investigating Committee in connection with or related to the Articles of Impeachment or the Impeachment Proceedings.

9. All additional materials to which a defendant would be entitled under Article 39.14 of the Texas Code of Criminal Procedure.

In accordance with Texas law, the Attorney General requests that the Texas House of Representatives provide an itemized list of every "document, item, or other information provided to [him] under [article 39.14]." Tex. Code Crim. Pro. art. 39.14(i).

Since the passage of the Michael Morton Act, a defendant need not establish good cause for production of these materials. *See In re State*, 659 S.W.3d at 12 (recognizing that the Michael Morton Act "delete[d] the good cause requirement"). Nevertheless, timely production of these materials is necessary to secure Attorney General Paxton's constitutional rights to due process and the due course of law, to present a complete defense, and to confront and cross-examine witnesses, as those rights are guaranteed are the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and Article I, Sections 10 and 19 of the Texas Constitution. Should the House fail to comply with its statutory obligations, the Attorney General will move to compel production of these disclosures and move to exclude any evidence that is not timely disclosed or to dismiss any charge to which the withheld evidence may be relevant. *See In re State*, 605 S.W.3d at 726 (Tex.

App.—Houston [1st Dist.] 2020, no pet.) ("It is well-settled that when evidence is not produced in contravention of the requirements of article 39.14, exclusion of evidence . . . is in the nature of a court-fashioned sanction for prosecutorial misconduct. . . ." (internal quotations omitted) (citing *Francis v. State*, 428 S.W.3d 850, 855 (Tex. Crim. App. 2014)); *see also* Tex. Code Crim. Proc. art. 28.01, § 1(6).

Respectfully submitted.

/s/ Christopher D. Hilton
Judd E. Stone II
Christopher D. Hilton
Allison C. Collins
Amy S. Hilton
Kateland R. Jackson
Joseph N. Mazarra

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joseph.mazzara86@proton.me

Counsel for the Attorney General

CERTIFICATE OF SERVICE

This demand was served via email on the House Board of Managers through their counsel, Rusty Hardin and Dick DeGuerin, on July 6, 2023.

/s/ Christopher D. Hilton
Christopher D. Hilton

Exhibit D

THE SENATE OF THE STATE OF TEXAS
COURT OF IMPEACHMENT

IN THE MATTER OF WARREN KENNETH PAXTON, JR.

ATTORNEY GENERAL PAXTON'S MOTION FOR PRETRIAL SCHEDULING ORDER OR PRETRIAL CONFERENCE

Attorney General Paxton respectfully requests that the Court enter the following scheduling order to set pretrial deadlines that will govern these proceedings. Scheduling orders are entered to govern pretrial proceedings for most cases in every Texas state or federal court. Because of the House's ongoing intransigence regarding providing even minimal disclosures to Attorney General Paxton, and in light of the Senate's unintentional oversight in not providing for a pretrial discovery schedule, a scheduling order is necessary to ensure a full and fair trial consistent with Attorney General Paxton's rights under the United States Constitution and Texas Constitution to due process and due course of law. U.S. Const. amend. XIV; Tex. Const. art. I, sec. 19. Alternatively, Attorney General Paxton requests that the Court schedule a pretrial conference on or before July 14, 2023, to discuss and determine a schedule for this proceeding leading up to trial.

Respectfully submitted.

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

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joseph.mazzara86@proton.me

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 7, 2023.

/s/ Christopher D. Hilton
Christopher D. Hilton

THE SENATE OF THE STATE OF TEXAS
COURT OF IMPEACHMENT

IN THE MATTER OF WARREN KENNETH PAXTON, JR.

PROPOSED DEADLINES

The House must disclose all materials listed in Texas Code of Criminal Procedure 39.14 by this date.	July 11, 2023
All motions to amend or supplement the House's pleadings must be filed by this date.	July 14, 2023
Any motion to quash the Articles of Impeachment or for a bill of particulars shall be filed by this date.	July 18, 2023
Any subpoena requests must be submitted on or before this date. The Court will endeavor to issue or decline to issue all requested subpoenas within three (3) business days.	July 31, 2023
The House must file a document evidencing compliance with the Texas Code of Criminal Procedure article 39.14(j) on or before this date.	August 5, 2023
Respondent must file an answer to the Articles of Impeachment by this date.	August 5, 2023
Pretrial motions must be filed on or before this date.	August 5, 2023
Pretrial motions may be filed at any time before the pretrial motion deadline. A response to any motion must be filed and served on all other parties not later than ten (10) days after service of the motion. Any reply is due no later than five (5) days after the service of the response.	
All responses to pretrial motions must be filed on or before this date.	August 15, 2023
All replies in support of pretrial motions must be filed on or before this date.	August 20, 2023

Exhibit lists, with copies of each exhibit attached, and witness lists must be provided by this date. Any party intending to use a demonstrative exhibit should provide the same to opposing counsel at least 3 days prior to the Final Pretrial conference so that if any objections or issues are raised about the demonstrative exhibit, they can be addressed at the Final Pretrial conference.	August 22, 2023
Proposed jury charges, to include jury instructions, must be filed on or before this date.	August 25, 2023
Objections to exhibit lists, witness lists, or proposed jury charges must be filed on or before this date.	August 28, 2023
Final Pretrial Conference: the Court will resolve all pending motions on or before the pretrial conference date.	August 31, 2023

Exhibit E

July 11, 2023

Via Email: christopher.d.hilton@proton.me and judd.e.stone@proton.me
Judd E. Stone II, Esq.
Christopher D. Hilton, Esq.
Stone | Hilton PLLC
1115 W. Slaughter Lane
Austin, Texas 78748

Re: Discovery Demand and Motion for Pretrial Scheduling Order or Conference

Dear Messrs. Stone and Hilton:

We write in response to your discovery demand e-mailed to us on July 6, 2023, at 5:54 P.M., and your motion for pre-trial scheduling matters, filed 25-hours later (despite stating in the July 6, 2023 letter that you requested a response within 7 days of the letter). While we will timely respond to your motion as required by the Senate Rules, we address below the issues raised in the letter and further propose an agreement that may moot aspects of the motion.

We disagree with your summary conclusion that select portions of the Texas Code of Criminal Procedure apply to the Senate's impeachment trial. You fail to provide any legal support for your proposition, and you also ignore that Texas Government Code section 665.024 expressly states that "[t]he senate shall adopt rules of procedure when it resolves into a court of impeachment." This is precisely what the Senate did here after careful thought.

Importantly, in detailing the procedural rules that apply both before and during the impeachment trial, the Senate did *not* incorporate the procedures you now claim should apply. Indeed, when the Senate wanted to adopt certain Texas rules, such as the Texas Rules of Evidence, it expressly stated as much.

Similarly, neither the Code nor the Michael Morton Act apply merely because portions of this statutorily created process[1] parallel aspects of criminal prosecutions. To the contrary, the Texas Constitution expressly notes that cases of impeachment "shall only extend to removal from office, and disqualification from holding any" future office in the state. TEX. CONST. Art. XV, § 4. And the Constitution further states that a party "convicted on impeachment shall also be subject to indictment trial and punishment according to law." TEX. CONST. Art. XV, § 4. Thus, the Constitution confirms that a judgment of impeachment is separate and distinct from a criminal prosecution.

[1] Tex. Gov. Code. §§ 665.001– .081.

A trial of impeachment articles in the Senate is not a criminal prosecution, a fact that courts in Texas and elsewhere have routinely recognized. *See e.g.*, *Ferguson v. Maddox*, 263 S.W. 888, 889-90 (Tex. 1924); *Mecham v. Gordon*, 156 Ariz. 297, 303 (Ariz. 1988); *Hastings v. United States Senate*, 716 F. Supp. 38, 41 (D.D.C. 1989), *aff'd mem. on other grounds*, 887 F.2d 332 (D.C. Cir. 1989).

There exist other examples demonstrating how impeachment differs from criminal prosecution. In one proceeding, judgment involves removal from a duly elected office—a privilege—or prohibition of an individual serving in public office. TEX. CONST. Art. XV, § 4. In the other, a criminal prosecution, a judgment may infringe upon an individual's life and liberty. Double jeopardy prohibits prosecution twice for the same crime, but that legal principle does not apply to impeachments. *Compare* TEX. CONST. Art. 1, § 14 *with* TEX. CONST. Art. XV. Criminal trials, but not impeachment trials, allow for *voir dire* of jurors, with the State and defendant afforded the right to strike potential jurors. *See e.g.*, TEX. CODE CRIM. PROC. ARTS. 35.01 – 35.29.

Here, the rules the Senate adopted provide Mr. Paxton with ample opportunity to investigate the claims brought against him. Both parties are treated equally and provided the opportunity to compel documents prior to trial and further compel the testimony of witnesses at trial. *See* Senate Rule 6. Moreover, the Senate Rules expressly recognize that both sides are free to speak with potential witnesses. *See* Senate Rule 21(g).

Regardless of our disagreement about what the Senate Rules do or should require, and consistent with our continued commitment to transparency, we agree to voluntarily supply you with copies of all relevant documents in our possession, in exchange for Mr. Paxton agreeing to provide us with the same. If agreement is reached, we can commence a rolling production of materials this week.

Please let us know whether Mr. Paxton will accept this agreement by signing below. We can then work with you to establish the details of exchanging documents.

Sincerely,

Rusty Hardin
Rusty Hardin & Associates, LLP
1401 McKinney Street, Suite 2250
Houston, Texas 77010

Dick DeGuerin
DeGuerin and Dickson
1018 Preston, 7th Floor
Houston, Texas 77002

cc: Tony Buzbee
Dan Cogdell
Allison C. Collins
Amy S. Hilton
Kateland R. Jackson
Joseph N. Mazarra

AGREED:

_____
Christopher Hilton on behalf of Warren Kenneth Paxton

_____
Judd Stone on behalf of Warren Kenneth Paxton

Exhibit F

RE: Discovery Order

From christopher.d.hilton@proton.me <christopher.d.hilton@proton.me>

To Lara Hollingsworth<lhollingsworth@rustyhardin.com>

CC judd.e.stone<judd.e.stone@proton.me>, Dick Deguerin<ddeguerin@aol.com>, Rusty Hardin<rhardin@rustyhardin.com>, Anthony Buzbee<Tbuzbee@txattorneys.com>, Dan Cogdell<dan@cogdell-law.com>, allison.collins23<allison.collins23@proton.me>, Jenny Brevorka<jbrevorka@rustyhardin.com>, kateland.jackson<kateland.jackson@proton.me>, Joseph N. Mazzara<joseph.mazzara86@proton.me>, Amy Hilton<amy.s.hilton@proton.me>

Date Sunday, July 16th, 2023 at 12:26 PM

Lara,

I will neither read nor respond to a letter that opens with those kind of ad hominem attacks.

When can we expect a response to our questions about your confidentiality proposal?

Thanks,
Chris

------- Original Message -------
On Sunday, July 16th, 2023 at 12:10 PM, Lara Hollingsworth <lhollingsworth@rustyhardin.com> wrote:

> Please see the attached response to your below email.
>
> Sincerely,
>
> Lara Hudgins Hollingsworth
>
> Partner
>
> RH&A
>
> Rusty Hardin & Associates, LLP
>
> 5 Houston Center

1401 McKinney, Suite 2250la

Houston, Texas 77010

(713) 652-9000 Phone

(713) 652-9800 Fax

lhollingsworth@rustyhardin.com

From: Chris Hilton <christopher.d.hilton@proton.me>
Sent: Thursday, July 13, 2023 6:25 PM
To: Dick DeGuerin <ddeguerin@aol.com>
Cc: Rusty Hardin <rhardin@rustyhardin.com>; Andrew Murr <Andrew.Murr@house.texas.gov>; Lara Hollingsworth <lhollingsworth@rustyhardin.com>; judd.e.stone <judd.e.stone@proton.me>; Anthony Buzbee <Tbuzbee@txattorneys.com>; Dan Cogdell <dan@cogdell law.com>; allison.collins23 <allison.collins23@proton.me>
Subject: Re: Discovery Order

Thank you for the time to discuss yesterday's discovery order and your impending production. Please send productions to me, Judd, and Allison, who are both CC'd on this email.

I have summarized our discussion below. Let me know if and to what extent you disagree with my understanding of our conversation.

We began by discussing the contours of your forthcoming production. You and Lara (I refer to both of you as "you" unless otherwise indicated) represented that you will produce what you described as a "good amount" or a "good chunk" or a "big dump" of documents tomorrow, followed by rolling productions that will be completed "sometime next week." You also said that the disclosures required by the Discovery Order would be provided along the same timeline. You stated that you would produce all of the materials that we are entitled to inspect, and that there were no physical objects/evidence that could not be produced electronically. You and Lara could not provide any additional information about tomorrow's production or its contents, including the volume of data or number of documents, the details of the production format, and whether we would be receiving a load file. You and Lara also could not state when you would be finished gathering documents.

You committed to checking on a few things and providing us that information before or contemporaneously with tomorrow's production, including whether you have any hard copies of documents that need to be scanned, whether the production will include a load file, and whether the documents would be sequentially numbered/bates

stamped. **We request that you provide answers to these questions as soon as humanly possible so that we can prepare to receive the data.**

You committed to providing some additional information next week. You said you would provide a date by which your production will be completed (other than supplemental materials) by Monday or Tuesday of next week. You also said that you would let us know on Monday your position on a privilege log, which in our view is required in any document production wherein privileged materials are being withheld, including this one. **We request that you provide us with all of this information no later than Monday at 5:00 PM.**

You committed to providing additional documents as you receive them, which we appreciate. We also understood your commitment in this regard to extend to both: (1) documents that are in the possession of "the Managers, the Committee, [and] their agents]" but that are not yet in counsel's possession; and (2) later-acquired documents that you collect in the course of your investigation. We trust that you will turn over additional evidence immediately, and no later than 48 hours after you receive it.

You committed to construing your obligations under the Court's order in the broadest way possible to maximize the disclosure of documents and information, as contemplated by the Court's order and consistent with the public statements made by you and your clients.

You asked me whether we would provide copies of any correspondence we have sent to John Scott regarding privilege. I committed to letting you know our position on that request on Monday.

We agreed not to discuss the issue of expert disclosures at this time, and we committed to discuss it at a later date. We also agreed to work together in good faith regarding any hard copy documents and other inspection that would need to happen.

You refused to answer a number of my questions, repeatedly saying that you would not be "interrogated" and telling me "don't go crying to daddy," in reference to the Court. By way of specific example, you refused to tell me when your production of each category of documents would be complete, whether you had any documents that fell into a particular category, and what you considered to be a "timely" production.

I explained that I was simply trying to confer with you as ordered by the Court, and that I was only asking you questions to understand what you had and when it would be produced, which is my routine practice in every case. I further explained that my urgency in getting answers to my questions and in obtaining your documents was due to your clients' obfuscation, delay, and refusal to provide these disclosures--as you have always been legally required to do, and as you apparently "intended to produce ... from the beginning," according to the joint statement that Dick and Rusty issued.

Based on our call today, I am troubled that you were not more prepared to produce this information and discuss your documents--despite your professed intention to have produced these documents "from the beginning"--and I am not reassured by your repeated, dismissive, and unhelpful statement that you would "timely" produce documents. Because you could not provide any details, and because you did not state what you meant by "timely," I fear that you will continue your obvious tactic of sandbagging my client in order to conduct your sham impeachment prosecution by ambush. Furthermore, we will seek any necessary relief from the Court, which has instructed us to bring "[a]ny dispute ... to the Court's attention as soon as possible."

We hope that you will "abide by [your] responsibilities of fairness, full disclosure, and the Senate rules," as you said in your email earlier today. The law and the Court require you to do so.

Thanks,

Chris

------- Original Message -------
On Thursday, July 13th, 2023 at 4:05 PM, Dick Deguerin <ddeguerin@aol.com> wrote:

Standing by.

DeG

Sent from my iPad

Dick DeGuerin

DeGuerin and Dickson

1018 Preston

Houston, Texas 77002

713-223-5959

713-854-5959 cell

Board Certified in Criminal Law, Texas Board of Legal Specialization

Fellow, American College of Trial Lawyers

Fellow, American Board of Criminal Lawyers

Charter Member, NACDL, TCDLA, HCCLA

Member, American Board of Trial Advocates, Texas Chapter

Rated "AV Preeminent" by Martindale-Hubble since 1980

Listed in "Best Lawyers in America" since 1983

Adjunct Professor, University of Texas School of Law since 1994

ddeguerin@aol.com

On Jul 13, 2023, at 3:57 PM, Chris Hilton <christopher.d.hilton@proton.me> wrote:

I'll call you shortly but a little late - probably at 4:15. We'll provide an upload link ASAP.

Thanks,

Chris

------- Original Message -------
On Thursday, July 13th, 2023 at 3:18 PM, Dick Deguerin <ddeguerin@aol.com> wrote:

No, there's no need for a conference call. I can answer your questions. I will need a link from you as to how to get to you the voluminous first production, electronically.

Just call me on my cell at 713-854-5959.

DeG

Sent from my iPad

Dick DeGuerin

DeGuerin and Dickson

1018 Preston

Houston, Texas 77002

713 223 5959

713 854 5959 cell

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ddeguerin@aol.com

On Jul 13, 2023, at 2:14 PM, Chris Hilton <christopher.d.hilton@proton.me> wrote:

Dick,

We look forward to talking with you at 4:00. Will you be circulating a conference line or Zoom link?

Thanks,

Chris

------- Original Message -------
On Thursday, July 13th, 2023 at 1:51 PM, Dick Deguerin <ddeguerin@aol.com> wrote:

> Chris, I probably don't need to remind you that Lieutenant Governor Patrick's Discover Order of July 12, which we received at 5:02 pm yesterday, says that we shall "...confer and accomplish [the production] as soon as practicable..."
>
> We are working on our responsive evidence and should be able to have some production to you by tomorrow, with more coming next week
>
> We will continue to provide evidence as it becomes available on a "rolling production" basis.
>
> We intend to abide by our responsibilities of fairness, full disclosure, and the Senate rules.
>
> If you still feel the need to talk, I can be available at 4:00.
>
> DeG
>
> Sent from my iPad
>
> Dick DeGuerin
>
> DeGuerin and Dickson
>
> 1018 Preston
>
> Houston, Texas 77002
>
> 713-223-5959
>
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ddeguerin@aol.com

On Jul 13, 2023, at 12:08 PM, Chris Hilton <christopher.d.hilton@proton.me> wrote:

Counsel,

We are surprised not to have heard from you given your public statements that you "are happy to comply" with the order that you "intended to produce" "exactly" these materials all along.

Please confirm immediately that you are available for a call no later than 4:00 PM today and that we will receive your production before then, as requested.

Thanks,

Chris

------- Original Message -------
On Wednesday, July 12th, 2023 at 6:42 PM, Chris Hilton <christopher.d.hilton@proton.me> wrote:

Counsel,

We look forward to conferring and reaching agreement on these matters at your earliest possible availability. Can we discuss at 4:00 PM tomorrow, if not earlier?

In the meantime, we look forward to the immediate production of these materials and required disclosures. If it would be helpful, we can send you an upload link tonight so that we have a chance to look at your production prior to our call.

Thanks,

Chris

Stone | Hilton

------- Original Message -------
On Wednesday, July 12th, 2023 at 5:01 PM, Patsy Spaw <Patsy.Spaw@senate.texas.gov> wrote:

> Please see the attached Discovery Order issued by Lieutenant Governor Dan Patrick today, July 12, 2023.
>
> Respectfully,
>
> *Patsy Spaw*
>
> Secretary of the Senate
>
> P.O. Box 12068
>
> Austin, Texas 78711

patsy.spaw@senate.texas.gov

Telephone: 512/463-0100

Fax: 512/463-6034

Exhibit G

Re: Document production and confidentiality

From christopher.d.hilton@proton.me <christopher.d.hilton@proton.me>

To Lara Hollingsworth<lhollingsworth@rustyhardin.com>

CC judd.e.stone<judd.e.stone@proton.me>, Dan Cogdell<dan@cogdell-law.com>, Anthony Buzbee<Tbuzbee@txattorneys.com>, Dick Deguerin<ddeguerin@aol.com>, Rusty Hardin<rhardin@rustyhardin.com>, Jenny Brevorka<jbrevorka@rustyhardin.com>

Date Saturday, July 15th, 2023 at 4:03 PM

Lara,

We'll need some time to discuss your proposal.

It would help us if you could please further explain your position in the following particulars: (1) what are the "various statutes" you contend apply to your production? (2) is it your contention that only subsections (e) and (f) of art. 39.14 apply to this proceeding? (3) how many documents are implicated by your proposal, and when did you discover them? (4) when we will receive a complete production of all documents that do not "contain sensitive personal information or are documents that are treated as confidential pursuant to various statutes"?

In the meantime, you should continue to produce documents as required by the discovery order, and this issue should not delay completing your production in any way.

Please answer our questions as soon as possible. We look forward to your prompt response.

Thanks,
Chris

STONE | HILTON

------- Original Message -------
On Saturday, July 15th, 2023 at 10:28 AM, Lara Hollingsworth <lhollingsworth@rustyhardin.com> wrote:

> Good Morning,
>
> During the review and preparation of documents for production we determined that a substantial number of documents either contain sensitive personal information or are documents that are treated as confidential pursuant to various statutes. As you are aware, Texas Code of Criminal Procedure art. 39.14 contains the following provisions:

(e) Except as provided by Subsection (f), the defendant, the attorney representing the defendant, or an investigator, expert, consulting legal counsel, or other agent of the attorney representing the defendant may not disclose to a third party any documents, evidence, materials, or witness statements received from the state under this article unless:

1. a court orders the disclosure upon a showing of good cause after notice and hearing after considering the security and privacy interests of any victim or witness; or

2. the documents, evidence, materials, or witness statements have already been publicly disclosed.

(f) The attorney representing the defendant, or an investigator, expert, consulting legal counsel, or agent for the attorney representing the defendant, may allow a defendant, witness, or prospective witness to view the information provided under this article, but may not allow that person to have copies of the information provided, other than a copy of the witness's own statement. Before allowing that person to view a document or the witness statement of another under this subsection, the person possessing the information shall redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document or witness statement. For purposes of this article, the defendant may not be the agent for the attorney representing the defendant.

We request that Mr. Paxton agree to be bound by subsection (e) and (f) of Texas Code of Criminal Procedure article 39.14. This is consistent with his request that the House Managers follow the dictates of article 39.14. Moreover, it permits the House Managers to continue to timely produce documents without delay. If Mr. Paxton is unwilling to agree to this, we are compelled to file a motion with the Senate, which we will do no later than Monday morning, requesting that the Discovery Order be amended to include the above provisions.

Please let us know whether Mr. Paxton is willing to abide by the above provision, which is set for in Texas Code of Criminal Procedure article 39.14.

Sincerely,

Lara Hudgins Hollingsworth

Partner

Rusty Hardin & Associates, LLP

5 Houston Center

1401 McKinney, Suite 2250

Houston, Texas 77010

(713) 652-9000 Phone

(713) 652-9800 Fax

lhollingsworth@rustyhardin.com

Exhibit H

July 16, 2023

Via Email: christopher.d.hilton@proton.me and judd.e.stone@proton.me

Judd E. Stone II, Esq.
Christopher D. Hilton, Esq.
Stone|Hilton PLLC
1115 W. Slaughter Lane
Austin, Texas 78748

Re: 7/15/23 emails regarding whether Mr. Paxton will agree to be bound by provisions identical to subsections (e) and (f) of Texas Code of Criminal Procedure art. 39.14 regarding the treatment of documents he demanded production of pursuant to the statute

Dear Chris,

To be clear, we are NOT seeking to withhold documents from you. Quite the opposite. We are seeking to find the most expeditious path for getting the documents to you while also following the dictates of the law and the Legislature's clear intent to protect the confidentiality of certain types of materials. You demanded the production of materials pursuant to Texas Code of Criminal Procedure art. 39.14. Our request is simple: will you also agree to be bound, like any other citizen in Texas who receives documents pursuant to that provision, to the protections set forth in subsections (e) and (f)? If yes, nothing will change, and we will continue with the production of the documents identified in the Discovery Order and presently in our possession. However, if you refuse to be so bound, we are compelled to ask the Senate whether they intend to treat Mr. Paxton the same as others who obtain the materials described in article 39.14 or whether Mr. Paxton will get unique treatment.

Importantly, there is no question that we have documents in our possession that the law recognizes are confidential. First and foremost, the Texas Legislature made the policy decision that documents produced pursuant to article 39.14 are so sensitive in nature that a person receiving them "may not disclose to a third party any documents, evidence, materials, or witness statements received from the state under this article." The Legislature went even further to protect such information. While it permits counsel to show "a defendant, witness, or prospective witness" the documents produced under art. 39.14, it also (1) prohibits the people viewing the documents from having "copies of the information provided," and it further (2) requires defense counsel to "redact the address, telephone number, driver's license number, social security number, date of birth, and any bank account or other identifying numbers contained in the document" before allowing others to view it.

Second, as you know, Texas Government Code Chapter 552 contains multiple sections reflecting the Legislature's decision that certain information is not considered public information and should be kept confidential, which includes but is not limited to law enforcement records (section 552.108), personnel files (section 552.102), and personal

information such as social security numbers (section 552.147). *See also* Texas Attorney General Ken Paxton's *Public Information Act Handbook 2022*, www.texasattorneygeneral.gov/publicinfo_hb.pdf (in which Mr. Paxton's office devoted over 100 pages to detailing information that is not subject to public disclosure). There is also Texas Government Code section 301.020, which speaks directly to documents "held by a general investigating committee" and states that such information "is confidential and not subject to public disclosure."[1] Thus, if Mr. Paxton will not agree to the protections provided for by subsections (e) and (f) of article 39.14, then the House Managers are obligated to seek guidance from the Senate. And as always, we will abide by its decision.

Finally, you mentioned that you need more time to discuss the issue. We are happy to wait to file our motion with the Senate. Our offer to do so by Monday morning was made so as to avoid a delay in production. However, we do not want to impose upon the Senate if the parties can reach an agreement. Thus, we will wait to receive your response to our inquiry before filing a motion with the Senate. Please note that until the issue is resolved either by agreement or as the result of guidance from the Senate, we are unable to produce any additional documents.

We look forward to your response.

Sincerely,

Rusty Hardin
Rusty Hardin & Associates, LLP
1401 McKinney Street, Suite 2250
Houston, Texas 77010

Dick DeGuerin
DeGuerin and Dickson
1018 Preston
Houston, Texas 77002

[1] To be sure, any agreement by Mr. Paxton to abide by the provisions contained in subsection (e) or (f) of the Texas Code of Criminal Procedure art. 39.14 does not prevent Mr. Paxton from admitting or attempting to admit during the impeachment trial in the Senate the materials produced by the House Managers. The confidentiality provisions dictate Mr. Paxton and his counsel's conduct pre-trial.

cc: Tony Buzbee
Dan Cogdell
Allison C. Collins
Amy S. Hilton
Kateland R. Jackson
Joseph N. Mazarra
Lara Hollingsworth
Jenny Brevorka

Exhibit I

THE SENATE OF THE STATE OF TEXAS
COURT OF IMPEACHMENT

IN THE MATTER OF WARREN KENNETH PAXTON, JR.

MOTION TO PRECLUDE ATTORNEY GENERAL WARREN KENNETH PAXTON JR. FROM BEING COMPELLED TO TESTIFY

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

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Counsel for the Attorney General

In Texas, an impeachment trial is legally considered a criminal proceeding. Although it may proceed in part on allegations broader than those recognized under Texas's criminal laws, our Constitution recognizes that an impeachment does not seek civil redress on behalf of a plaintiff; it is an action by the State to punish an alleged wrongdoer. Hence why Article I, section 10 of our Constitution's Bill of Rights—entitled "Rights of Accused in Criminal Prosecutions"—dispenses with the requirement of an indictment before criminal charges may move forward in cases of impeachment, while preserving all other criminal procedural rights in that context. Tex. Const. art. I, § 10. And why the Constitution provides that "[i]n all criminal cases, except treason and impeachment, the Governor shall have power, after conviction . . . to grant reprieves and commutations of punishment and pardons." *Id.* art. IV, § 11. And why the Constitution speaks of impeachments in terms of conviction and acquittal. *Id.* art. XV, § 3 ("convicted"); art. IV, § 16(c) ("acquitted").

This Court has acknowledged as much before—and protected previous respondents to impeachment articles accordingly. As the Presiding Officer in the 1917 trial of Governor Ferguson summarized, "[t]he weight of authority in the United States and elsewhere . . . is that an impeachment proceeding is a criminal proceeding," during which an impeached official has the right "to refrain from taking the stand." State of Tex. Senate, Rec. of Proc. of the High Ct. of Impeachment on the Trial of Hon. James E. Ferguson, Governor, S. 35, 2nd & 3rd Sess. at 337, 340 (1917) ("Ferguson Impeachment Proceedings"). This Court has repeatedly recognized similar basic rights. *See, e.g.*, State of Tex. Senate, Rec. of Proc. of the High Ct. of Impeachment on the Trial of O.P. Carrillo, Judge, S. 64, Reg. Sess. (1975) ("Carrillo Impeachment Proceedings") (among other rights, not compelled to testify); S. Journal, 42nd Cong., 2nd Sess. (1931) ("Price Impeachment Proceedings") (same). And Texas's adherence to precedent under the doctrine of

stare decisis reinforces that this Court should stand by those decisions. *See Mitschke v. Borromeo*, 645 S.W.3d 251, 263 (Tex. 2022).

Because these are criminal proceedings, the Attorney General's right to protection from being compelled to testify "is so well understood that it requires no citation of authority to support it." *Brumfield v. State*, 445 S.W.2d 732, 735 (Tex. Crim. App. 1969). The Attorney General therefore moves the Presiding Officer, pursuant to his authority under Senate Rules 6, 13, and 15(b), to enforce that right in these proceedings—as the Texas Constitution requires—through an order that: (1) prohibits the House Managers from seeking a subpoena requiring Attorney General Paxton to testify before the Senate; (2) prohibits the House Managers from raising whether Attorney General Paxton chooses to testify before the Senate at any point during trial; and (3) provides that, should Attorney General Paxton elect not to testify, a limiting instruction to the jury shall be issued, admonishing the jury that no negative inference may be drawn from his decision not to do so.

I. ATTORNEY GENERAL PAXTON CANNOT BE COMPELLED TO TESTIFY.

A criminal defendant's right not to testify against his will—that his "fault was not to be wrung out of himself"—was well-established when Blackstone articulated it. 4 Blackstone 293. Indeed, this right has existed in some form since at least the 1640s, and perhaps earlier. *See, e.g.*, R.H. Helmholz, *Origins of the Privilege Against Self-Incrimination: The Role of the European* Ius Commune, 65 N.Y.U. L. Rev. 962 (1990). Texas law and practice recognize that an impeachment trial is a criminal proceeding. That ancient right therefore applies, and the House Managers may not violate it through subpoena or otherwise.

A. This impeachment trial is a criminal proceeding.

This Court has long recognized that an impeachment trial is a criminal proceeding. The question was put directly before *both* the House and Senate during Governor Ferguson's 1917 impeachment—the only other impeachment of a statewide elected official in Texas history. During the House's investigation of allegations against Governor Ferguson, a prosecutor for the House attempted to compel the Governor to testify before the House. *See* H. Journal, 35th Cong., 2nd Sess. at 160-61, 777-78 (1917); *see also* Ferguson Impeachment Proceedings at 121. The Governor's lawyer objected, explaining the Governor had a right to decline taking the stand because of the criminal nature of the proceedings. H. Journal, 35th Cong., 2nd Sess. at 160. The judge appointed to rule on the admissibility of evidence and testimony agreed with the Governor, sustaining the objection and ruling that the Governor could not be compelled to provide testimony and expressly declining to adopt the House prosecutor's view that the impeachment proceedings were "not necessarily criminal." *Id.* at 160-61. In so ruling, the judge determined "it is a constitutional privilege that no one can be compelled to testify against himself." *Id.* at 160.

Governor Ferguson ultimately testified before the House voluntarily, and counsel for the House managers sought to introduce his *voluntary* statements into evidence. Ferguson's counsel objected based on then-applicable Article 5517, which provided that when a witness testified before the investigating committee, "[t]he testimony given by a witness before such investigating committee shall not be used against him in any criminal action or proceeding." In support of admitting the voluntary House statements, counsel for the House Managers argued that in Texas, an impeachment was not a criminal proceeding, even though he "admitt[ed] frankly . . . that most of the authorities [he had] been able to find outside of Texas classify impeachment as a criminal case—[a] criminal proceeding." Ferguson Impeachment Proceedings at 312-13.

The Senate's Presiding Officer admitted the statements into evidence because, in his view, Article 5517's immunity attached only to someone subject to compulsory process, *id.* at 339-40, and the Committee of the Whole before which Ferguson testified was not a "committee" for purposes of Article 5517's immunity. *Id.* at 340. But in explaining his holding, the Presiding Officer emphasized the criminal nature of an impeachment proceeding repeatedly. "The weight of authority in the United States and elsewhere," the Presiding Officer remarked, "is that an impeachment proceeding is a criminal proceeding." *Id.* at 337. That conclusion "evidently was the conviction upon which the Senate of the United States" acted in a previous impeachment. *Id.* And "under the Texas Constitution," the Presiding Officer was "of the opinion that it is what would probably be termed a quasi-criminal action." *Id.* at 338. That was in part because "[t]here is language in several sections of the [Texas] Constitution which would indicate that the framers of the Constitution had in mind that an impeachment case was a criminal case." *Id.* And while Governor Ferguson was not entitled to Article 5517's protections, that was in relevant part because the Governor "claimed the right, which in the opinion of the presiding officer of [the House]," "and in the opinion of this Presiding Officer [of the Senate], he had a right to claim, to refrain from taking the stand in that proceeding." *Id.* at 340.

This Court has since reaffirmed its holdings in the Ferguson impeachment that an impeachment trial is a criminal proceeding. Senate impeachment rules routinely provide the robust procedural protections afforded to criminal defendants consistent with that holding, including a right to fulsome evidentiary disclosures, the distinctive burden of proof beyond a reasonable doubt, and the obligation of the House Managers, as prosecutors, to bear that burden. *See, e.g.*, Carrillo Impeachment Proceedings at 10-17; Price Impeachment Proceedings at 18-21; S. Journal, 35th Cong., 2nd Sess. at 71-73 (1917) (Senate rules for Ferguson impeachment). The Court's rules for

this proceeding largely continue in that tradition. *See* S. Journal, 88th Cong., 1st Sess. at 40-52 (2023) ("Senate Rules"). And even the House Managers here apparently agree: when debating the Articles of Impeachment in the House, the House Managers repeatedly referred to the House's role as that akin to a grand jury, and to the Articles as the equivalent of an indictment. *See* H. Journal, 88th Cong., Reg. Sess. at 5923, 5952, 5963, 5967 (2023). Grand juries and indictments exist solely in criminal proceedings.

The Constitution confirms this Court's longstanding holding, speaking of impeachments as criminal matters repeatedly. Article I, section 10—entitled "Rights of Accused in Criminal Prosecutions"—delineates a variety of rights afforded every Texan. Out of those many rights, it declares that one, the right not to "be held to answer for a criminal offense unless on indictment of a grand jury," shall apply, as relevant here, "except . . . in cases of impeachment." The only permissible textual inference is that Article I, section 10 views an impeachment as a criminal matter—and that all of Article I, section 10's other protections, including that an accused "shall not be compelled to give evidence against himself," otherwise apply.

Other provisions confirm this conclusion. Article IV, section 11(b), vests the pardon power in the Governor "[i]n all criminal cases, except treason and impeachment." And the Constitution speaks of impeachments using distinctly criminal terminology: Article XV, section 3 states that "no person shall be *convicted*" but by a supermajority of the Senate; Article IV, section 16, authorizes the Lieutenant Governor to act as Governor if the Governor is impeached—but only until the Governor "is acquitted." Civil matters do not conclude in either a "conviction" or "acquittal."

Were there any remaining doubt, *stare decisis* requires this Court to stand by its previous decisions. *See* Black's Law Dictionary 1696 (11th ed. 2019). "During [an impeachment] trial[,]

the Senate sits 'as a court of impeachment,' and at its conclusion renders a 'judgment.'" *Ferguson v. Maddox*, 114 Tex. 85, 94 (1924). "The Senate sitting in an impeachment trial is just as truly a court as is this court." *Id.* And every other Court in Texas, perhaps every other court in the United States, adheres to some version of the *stare decisis* doctrine. *See Mitschke v. Borromeo*, 645 S.W.3d 251, 263 (Tex. 2022); Michael J. Gerhardt, The Power of Precedent 147–48 (2008) ("[I]t is practically impossible to find any modern Court decision that fails to cite at least some precedents in support."). After all, "[*s*]*tare decisis*—in English, the idea that today's Court should stand by yesterday's decisions—is a foundation stone of the rule of law." *Kimble v. Marvel Entertainment, LLC*, 576 U.S. 446, 455 (2015). It has long been "an established rule to abide by former precedents, where the same points come again in litigation," 1 W. Blackstone, Commentaries on the Laws of England 69 (1765), so to "avoid an arbitrary discretion in the courts." The Federalist No. 78, p. 529 (J. Cooke ed. 1961) (A. Hamilton). That is why in Texas "[a]dherence to precedent remains the touchstone of a neutral legal system that provides stability and reliability," and "[d]epartures from precedent must be carefully considered and should be rare." *Mitschke*, 645 S.W.3d at 263. Time-worn principles of judicial administration recommend that this Court stand by its earlier decisions. It should do so.

B. Because this trial is a criminal proceeding, Attorney General Paxton cannot be compelled to testify in it.

Given that an impeachment trial is legally considered to be a criminal proceeding, there can only be one conclusion: the Attorney General may, but cannot be forced to, testify. As the Court of Criminal Appeals put it, "[t]he proposition that a criminal defendant cannot be compelled to take the stand and give evidence against himself is so well understood that it requires no citation of authority to support it." *Brumfield v. State*, 445 S.W.2d 732, 735 (Tex. Crim. App. 1969). Joseph Story identified the right "from being compelled, in any criminal case, to be a witness against

[one]self" as well-rooted in a "common law privilege" as of his 1833 *Commentaries*. 3 J. Story, Commentaries on the Constitution of the United States § 1782 (1833). Even Blackstone thought it well-established. 4 Blackstone 293; *see also* Helmholz, *supra*, at 1. And our Constitution's Article I, section 10 enshrines this guarantee as a matter of Texas law. Tex. Const. art. I, § 10.

Both the House and this Court have also concluded that a respondent in an impeachment proceeding specifically enjoys the right not to testify if he does not wish to do so. During the House investigation that eventually led to Governor Ferguson's impeachment, counsel for the House prosecutors attempted to compel Governor Ferguson to testify. *See* H. Journal, 35th Cong., 2nd Sess. at 160. Governor Ferguson's counsel objected; the judge appointed by the House to resolve these questions ruled that "it is a constitutional privilege that no one can be compelled to testify against himself," and he sustained the objection. *Id.* Counsel for the House asked leave to raise several additional arguments in favor of compelling Governor Ferguson to testify, including that the right not to testify "is a privilege [the Governor] can have on the witness stand if any question asked him" tended to incriminate him; that the House's investigation "is an investigation by the State Legislature . . . as to whether or not certain things have been done, not necessarily criminal, but yet as such ought to preclude his longer being Governor;" and that the rule against self-incrimination "ought not to be applied as if [the Governor] were indicted . . . and on trial in the district court." *Id.* at 160-61. The judge dismissed these arguments out of hand and again ruled that Governor Ferguson could not be compelled to testify. *Id.* at 161. During Ferguson's trial, the Presiding Officer of this Court expressly referred to that objection approvingly: "[Ferguson] claimed the right, which in the opinion of the presiding officer of that body, and in the opinion of this Presiding Officer, he had a right to claim, to refrain from taking the stand in that proceeding." Ferguson Impeachment Proceedings at 340.

Federal impeachment practice confirms this right—as the Senate's Presiding Officer also acknowledged during the Ferguson trial. *Id.* at 337. In the history of impeachments before the United States Senate, no House prosecutor has ever so much as *attempted* to compel a respondent to testify before the Senate until 2010. *See* U.S. Senate, Impeachment Trial Comm. on the Articles Against Judge G. Thomas Porteous, Jr., S. 111, 2nd Sess., 489-95 (2010). In seeking to compel Judge Porteous to testify, House Managers admitted they were "not aware of an instance in which a judge was compelled to be a witness in a Senate impeachment trial," *id.* at 490, and the Senate denied the House's attempts. That is not because federal respondents historically attended their proceedings and voluntarily testified; indeed, for the eight impeachments between the Founding and 1904, four respondents—Senator William Blount (1799), Judge John Pickering (1804), Judge West Humphreys (1862), and President Andrew Johnson (1868)—did not attend their trials at all, and none of the eight testified. (Three were acquitted.) In 1905, Judge Charles Swayne refused to answer his impeachment charges in person and appeared at the Senate trial only during the cross-examination of witnesses. No federal impeachment respondent has taken the stand since Judge Alcee Hastings, in 1989, and each did so voluntarily. And the United States House did not so much as attempt to compel President Trump to testify in either of his impeachments. *See, e.g.*, "Trump Will Not Participate in Impeachment Hearing," Dec. 2, 2019, BBC News, https://www.bbc.com/news/ world-us-canada-50625550 (last visited July 5, 2023).

Governor Ferguson's assertion of a right not to testify against his will required virtually no debate because it was so well settled. But contrary to what the prosecutor in Governor Ferguson's impeachment argued—and what the House Managers may well assert—the right not to testify is not merely a right to refuse to answer a question that might incriminate the speaker. It includes "the right . . . to elect not to testify," and it also "prohibit[s] the State from exacting a price for

exercising that right." *Durham v. State*, 153 S.W.3d 289, 292 (Tex. App.—Beaumont 2004). Not only may "no adverse inference . . . be drawn from" an individual's exercise of the right, but "comment on that" exercise "is forbidden." *Brumfield*, 445 S.W.2d at 735. Individuals exercising the right are even constitutionally entitled to a jury instruction that no adverse inference may be drawn from a refusal to testify. *Durham*, 153 S.W.3d at 293. In other contexts, the refusal to provide that instruction when it is requested is a "constitutional error . . . that directly offends the United States or Texas Constitution[s]." *Id.* at 292; *see also Ulloa v. State*, 901 S.W.2d 507, 511-13 (Tex. App.—El Paso 1995, pet. ref'd). Texas courts recognize the federal principle that limiting instructions are "perhaps nowhere more important" than in the context of the right not to testify. *Durham*, 153 S.W.3d at 293 (quoting *Carter v. Kentucky*, 450 U.S. 288, 301 (1981)); *Ulloa*, 901 S.W.2d at 511. Simply put, if Attorney General Paxton chooses not to testify in his impeachment trial voluntarily, the House Managers may not comment on that decision, their counsel may not comment on it, and if requested, this Court should provide an instruction that no adverse inference should be drawn from that decision.

II. THIS COURT SHOULD ENTER AN APPROPRIATE ORDER PROTECTING ATTORNEY GENERAL PAXTON'S RIGHT NOT TO TESTIFY.

This Court has the power to enter an appropriate order protecting Attorney General Paxton's right not to testify should he choose not to do so. This Court's rules empower the Presiding Officer to, at his discretion, rule on pre-trial motions and to make and enforce rules and regulations that are conducive to a just trial. *See* Senate Rules 5(b), 6, 13(a). The Presiding Officer has the authority to make all evidentiary rulings, observing the Texas Rules of Evidence as nearly as practicable. *See* Senate Rules 13(b), 15(b). Just as in the Ferguson impeachment, the application of Attorney General Paxton's right not to testify is such a ruling. *See* H. Journal, 35th Cong., 2nd Sess. at 160-61.

And this Court should exercise that power expeditiously. No doubt both sides' presentations to this Court will be significantly affected depending on whether the House attempts to compel Attorney General Paxton to testify. These proceedings will proceed both more fairly and more efficiently if this Court confirms Attorney General Paxton's rights regarding testimony long before the eve of trial. *See* Senate Rule 13(b).

To those ends, Attorney General Paxton respectfully requests an order that fully protects his well-established right not to testify in these proceedings. That order should have three components. *First*, it should directly prohibit the House Managers from seeking a subpoena, through this Court or otherwise, that would require Attorney General Paxton to testify before the Senate. *Second*, it should prohibit the House Managers and their counsel from publicly raising or commenting on the Attorney General's decision whether to testify either before or during trial. And *finally*, it should provide that, should Attorney General Paxton elect not to testify, a limiting instruction to the jury shall be issued (upon request) that directs the jury not to draw any negative inference from his refusal to do so. Each of these requests follows straightforwardly from both Texas and federal constitutional law, and each is essential.

III. CONCLUSION

This Court should expeditiously enter an appropriate order prohibiting the House Managers from attempting to compel Attorney General Paxton to testify in his impeachment trial, forbidding them or their counsel from commenting on any decision not to do so, and providing for a limiting instruction, if necessary, at trial.

Respectfully submitted.

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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 7, 2023.

/s/ Judd E. Stone II
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