

THE SENATE OF THE STATE OF TEXAS  
COURT OF IMPEACHMENT

*Atty. Gen.*

JUL 25 2023

CLERK OF THE COURT

IN THE MATTER OF  
WARREN KENNETH PAXTON, JR.

ATTORNEY GENERAL WARREN KENNETH PAXTON JR.'S  
REQUEST FOR A BILL OF PARTICULARS

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*Counsel for the Attorney General*

After months of secret investigations into the Attorney General—a process that broke from a century and a half of past Texas practice, and that deprived the Attorney General of any meaningful participation in the investigation against him—the House General Investigating Committee unveiled twenty Articles of Impeachment. But the Articles themselves raised far more questions than they answered. Without any public inquiry or explanation during the investigation, and without sufficient detail in the Articles—here, the charging instrument for the Court of Impeachment—it is both impossible for the public to understand the allegations against their Attorney General and for the Attorney General’s legal team to prepare his defense. There are few names, no dates, and none of the details that Texas law requires in a charging instrument. Instead, the House has broken with Texas history in yet another way; rather than articulate its impeachment allegations clearly and with the constitutionally required level of detail, as every other House has done before, these Articles adopt a “kitchen sink” approach that violates the Texas Constitution. The public, the Attorney General, and the Senate deserve to know what is being alleged in this impeachment trial, and the law requires it.

Because this is an impeachment proceeding with constitutional procedural requirements, requiring the House to provide a bill of particulars rather than amend the Articles is a fair result that comports with due process and Texas criminal law. Since notice must be provided by the charging document, Texas law does not specifically provide for a bill of particulars. *Sledge v. State*, 903 S.W.2d 105, 107 (Tex. App.—Ft. Worth 1995), *aff’d*, 953 S.W.2d 253 (Tex. Crim. App. 1997); *State v. Houth*, 845 S.W.2d 853, 861 n. 6 (Tex. Crim. App. 1992). Federal courts require prosecutors to file a bill of particulars when needed to ensure that the defendant is informed of the charges against him in sufficient detail to enable him to prepare his defense and to minimize surprise at trial. *United States v. Montemayor*, 703 F.2d 109, 117 (5th Cir.), *cert. denied*, 464 U.S. 822; 104 S. Ct. 89; 78 L.Ed.2d 97 (1983); *United States v. Hawkins*, 661 F.2d 436, 451–52 (5th Cir. 1981). The Texas Court of Criminal Appeals has at times allowed bills of particulars in unusual circumstances, even though the Code of Criminal Procedure does not provide for it. *See, e.g., Ex parte Perry*, 483 S.W.3d 884, 899-900 (Tex. Crim. App. 2016).

Texas impeachments have also historically permitted a Bill of Particulars to be requested, as was done by O.P. Carrillo. Exhibit A. While Carrillo’s Bill of Particulars was ultimately not granted, the stark contrast between the amount of detail included in the Articles of Impeachment against Carrillo and the vague, threadbare Articles of Impeachment against Attorney General Paxton illustrates why a Bill of Particulars should be ordered here. Compare MTQ **Exhibit A** with **Exhibit 1**. For example, Carrillo faced an article for diverting the services of government employees for his personal benefit that delineated five specific employees and how their services were diverted. **Exhibit 1**. Another article specifically listed the government equipment that he used for his own personal use. **Exhibit 1**. A third alleged that Carrillo conspired to have the county pay for his groceries. **Exhibit 1**. Similarly, the Articles of Impeachment allegations against Ferguson were far more robust than those presented against Attorney General Paxton: the articles included dates, locations, amounts, items purchased (as relevant), and identified the entities or individuals involved in the alleged conduct. **Exhibit 2**.

These Articles are fatally deficient, particularly in comparison to those that came before. Contrary to clear constitutional mandates, a reader is left to guess as to the specific claims the prosecution must prove beyond a reasonable doubt to support each Article. None of the Articles provide the Attorney General with constitutionally adequate notice of the charges, and forcing him to proceed on any of these Articles will violate the Texas Constitution and Texas law. The need for specificity and particularity for each Article is of heightened importance in the context of the first impeachment of a statewide elected officer in over a century.

### **CONCLUSION AND RELIEF REQUESTED**

For the foregoing reasons, and for the reasons set forth in greater detail in the contemporaneously filed Motion to Quash, the House Board of Manager should be required to file a bill of particulars that pleads with specificity and particularly each of the elements below:

## **All Articles**

1. Date(s) or approximate date(s) of all material events so that compliance with applicable statutes of limitations can be determined.<sup>1</sup>
2. If the Article is based on a penal code statute or other statute, the specific statute must be identified.

## **Article I**

1. Identify the specific duty of office allegedly violated by the Attorney General, including the specific section of Chapter 123 of the Property Code.
2. Identify the specific employees the Attorney General allegedly “caused” to intervene into the litigation in question and how he “caused” them to do so.
3. Identify the alleged harm to the charitable organization.
4. Identify the alleged benefit to Nate Paul.
5. Identify each and every act allegedly committed by Attorney General Paxton himself that constitutes the offense alleged in Article I, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
6. Identify the basis, manner, and means that allegedly render the conduct alleged in Article I an impeachable offense.<sup>2</sup>

## **Article II**

1. Identify the legal opinion(s), by opinion number and date, underlying the allegation that Attorney General Paxton “misused his official power to issue written legal opinions under Subchapter C, Chapter 402, Government Code.”
2. Identify the employees that the respondent allegedly “caused” to prepare the opinion.
3. Identify the employees that the respondent allegedly “directed” to reverse their legal conclusion.
4. Identify the alleged benefit to Nate Paul or Paul’s business entities.
5. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article II, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
6. Identify the basis, manner, and means that allegedly render the conduct alleged in Article II an impeachable offense.

## **Article III**

1. Identify the employees that the respondent allegedly “directed” to act contrary to law.

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<sup>1</sup> See, e.g., Tex. Gov’t Code § 665.081.

<sup>2</sup> “[I]f it is the manner and means by which an act is done that makes an otherwise innocent act a criminal offense, it is necessary to allege facts showing the manner and means which makes the act a criminal offense.” *Giddings v. State*, 816 S.W.2d 538, 541 (Tex. App.—Dallas 1991, pet. ref’d) (citing *Posey v. State*, 545 S.W.2d 162, 163 (Tex. Crim. App. 1977)). Because each Article alleges conduct that is or could be within the Attorney General’s lawful authority, it is necessary for the House to plead with specificity the reasons why each alleged Article is impeachable.

2. Identify the decision, by file number, opinion number, and date, underlying the allegation that respondent “refus[ed] to render a proper decision.”
3. Identify the decision, by file number, opinion number, and date, underlying the allegation that “a decision involving another information request that was contrary to law and applicable legal precedent.”
4. Identify the manner and means by which the decision was allegedly “contrary to law and applicable legal precedent.”
5. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article III, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
6. Identify the basis, manner, and means that allegedly render the conduct alleged in Article III an impeachable offense.

#### **Article IV**

1. Identify the date(s) of the alleged “disregard of official duty,” including the date that respondent allegedly (1) “improperly” obtained access to information held by OAG and (2) provided the information to the benefit of Nate Paul.
2. Identify the specific information underlying the allegation that Attorney General Paxton “improperly obtained access to information held by his office that had not been publicly disclosed.”
3. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article IV, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
4. Identify the basis, manner, and means that allegedly render the conduct alleged in Article IV an impeachable offense.

#### **Article V**

1. Identify the laws governing prosecuting attorneys pro tem that were allegedly violated.
2. Identify the allegedly “baseless complaint.”
3. Identify the alleged benefit to Nate Paul or Paul’s business entities.
4. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article V, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
5. Identify the basis, manner, and means that allegedly render the conduct alleged in Article V an impeachable offense.

#### **Article VI**

1. Identify the employees that the House will rely upon to support its allegations in Article VI.
2. Identify the facts underlying the allegation that Attorney General Paxton took adverse personnel actions and the employees they were allegedly taken against.
3. Identify the employees that respondent allegedly “impugned” related to their professional reputations or “prejudiced” related to their future employment.

4. Identify the manner and means by which Attorney General Paxton allegedly “engaged in a public and private campaign to impugn the employees’ professional reputations or prejudice their future employment.”
5. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article VI, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
6. Identify the basis, manner, and means that allegedly render the conduct alleged in Article VI an impeachable offense.

#### **Article VII**

1. Identify the employees that respondent allegedly “directed” to conduct a “sham investigation.”
2. Identify the employees that allegedly made the whistleblower complaints underlying Article VII.
3. Identify the alleged “false or misleading statements” and the “lengthy written report” underlying Article VII.
4. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article VII, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
5. Identify the basis, manner, and means that allegedly render the conduct alleged in Article VII an impeachable offense.

#### **Article VIII**

1. Identify the “whistleblower complaints made by employees whom Paxton had terminated.”
2. Identify the manner and means by which “[t]he settlement agreement stayed the wrongful termination suit and conspicuously delayed the discovery of facts and testimony at trial.”
3. Identify the “advantage” that Attorney General Paxton allegedly obtained.
4. Identify the manner and means by which Attorney General Paxton allegedly “deprived the electorate of its opportunity to make an informed decision when voting for attorney general.”
5. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article VIII, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
6. Identify the basis, manner, and means that allegedly render the conduct alleged in Article VIII an impeachable offense.

#### **Article IX**

1. Identify the date(s) of the alleged solicitation or acceptance of the alleged bribe.
2. Identify with particularity the employment arrangement of the alleged mistress, including her hiring date.
3. Identify with particularity, including date, the alleged “favorable legal assistance from, or specialized access to, the office of the attorney general” Nate Paul received.
4. Identify with particularity the basis, manner, and means, including the date, place, and time, of the agreement supporting the alleged bribery.

5. Identify with particularity the alleged benefit received by respondent.
6. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article IX, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
7. Identify the basis, manner, and means that allegedly render the conduct alleged in Article IX an impeachable offense.

#### **Article X**

1. Identify the date(s) of the alleged solicitation or acceptance of the alleged bribe.
2. Identify with particularity the arrangement related to home renovations, including date(s) and the particular home renovations that were provided.
3. Identify with particularity, including date, the alleged “favorable legal assistance from, or specialized access to, the office of the attorney general” Nate Paul received.
4. Identify with particularity the basis, manner, and means, including the date, place, and time, of the agreement supporting the alleged bribery.
5. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article X, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
6. Identify the basis, manner, and means that allegedly render the conduct alleged in Article X an impeachable offense.

#### **Article XV**

1. Identify with particularity the alleged false or misleading statements Attorney General Paxton “made or caused to be made.”
2. Identify the public officials referenced in Article XV.
3. Identify the “lengthy written report.”
4. Identify the basis, manner, and means by which the “lengthy written report” is or was an official record.
5. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article XV, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
6. Identify the basis, manner, and means that allegedly render the conduct alleged in Article XV an impeachable offense.

#### **Article XVI**

1. Identify the basis, manner, and means of the alleged conspiracy, including the date, place, time, and names of alleged participants in the alleged conspiracy or attempted conspiracy.
2. Identify how many conspiracies are alleged to have existed, the identities of the co-conspirators, and the involvement of each person.
3. Identify the agreement reached that supports the purported conspiracy or attempted conspiracy, including date, time, place, manner, and means.
4. Identify the alleged unlawful act that served as the basis of the conspiracy, or alternatively, specify both the lawful means used and the unlawful goal that was intended to be achieved.
5. Identify the felony that was allegedly intended to be committed.

6. Identify each and every overt act allegedly committed in furtherance of the conspiracy, by whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
7. Identify each and every act allegedly committed by Attorney General Paxton constituting the offense alleged in Article XVI, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
8. Identify the basis, manner, and means that allegedly render the conduct alleged in Article XVI an impeachable offense.

#### **Article XVII**

1. Identify the employees Attorney General Paxton allegedly “caused” to “perform services for his benefit and the benefit of others,” including the date, time, place, manner, and means of the alleged misappropriation.
2. Identify with particularity each alleged service that was performed which constitutes the purported misappropriation of public resources.
3. Identify the benefit Attorney General Paxton or another received and state with particularity what made this conduct unlawful or impeachable.
4. Identify each and every act allegedly committed by Attorney General Paxton that constitutes the offense alleged in Article XVII, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
5. Identify the basis, manner, and means that allegedly render the conduct alleged in Article XVII an impeachable offense.

#### **Article XVIII**

1. Identify each oath, statute, constitutional provision, and public policy that Attorney General Paxton allegedly violated.
2. Identify each Article that will be used to support the allegations in Article XVIII.
3. Identify each and every act allegedly committed by Attorney General Paxton that constitutes the offense alleged in Article XVIII, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
4. Identify the basis, manner, and means that allegedly render the conduct alleged in Article XVIII an impeachable offense.

#### **Article XIX**

1. Identify each and every alleged instance of “misconduct, private or public, of such character as to indicate his unfitness for office” allegedly engaged in by Attorney General Paxton, including the date, time, and place of occurrence of each act.
2. Identify each Article that will be used to support the allegations in Article XIX
3. Identify each and every act allegedly committed by Attorney General Paxton that constitutes the offense alleged in Article XIX, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
4. Identify the basis, manner, and means that allegedly render the conduct alleged in Article XIX an impeachable offense.



**Article XX**

1. Identify with particularity how Attorney General Paxton allegedly used “his official powers in a manner calculated to subvert the lawful operation of the government.”
2. Identify with particularity how Attorney General Paxton allegedly “obstruct[ed] the fair and impartial administration of justice.”
3. Identify with particularity how Attorney General Paxton allegedly “prejudice[d] . . . public confidence in the government of this State.”
4. Identify each Article that will be used to support the allegations in Article XX.
5. Identify each and every act allegedly committed by General Paxton that constitutes the offense alleged in Article XX, with whom each act was allegedly committed, and the date, time, and place of occurrence of each act.
6. Identify the basis, manner, and means that allegedly render the conduct alleged in Article XX an impeachable offense.

Respectfully submitted.

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**EXHIBIT 1: Articles of Impeachment against Carillo**

**HOUSE RESOLUTION 161****A RESOLUTION IMPEACHING O. P. CARRILLO, DISTRICT JUDGE  
FOR THE 229TH JUDICIAL DISTRICT OF TEXAS, AND  
PREFERRING ARTICLES OF IMPEACHMENT AGAINST HIM**

BE IT RESOLVED by the House of Representatives of the State of Texas, That O. P. Carrillo, judge of the district court for the 229th Judicial District of the State of Texas, is impeached and that the following articles of impeachment be exhibited to the senate:

Articles of impeachment exhibited by the House of Representatives of the State of Texas in the name of itself and of all the people of the State of Texas against O. P. Carrillo, judge of the district court for the 229th Judicial District of the State of Texas, in maintenance and support of its impeachment against him.

**ARTICLE I**

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to have Duval County pay for groceries, to which he was not entitled, for his personal use and benefit.

**ARTICLE II**

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo used his official powers in a manner calculated to subvert the principles of democratic government and obstruct the fair and impartial administration of justice, thereby bringing the district court for the 229th Judicial District of Texas into scandal and disrepute to the prejudice of public confidence in the judiciary of the state.

This conduct included but was not limited to one or more of the following:

(1) in the case of Clinton Manges versus M. A. Guerra, et al., Cause No. 3953 in the district court for the 229th Judicial District of Texas, which involved a party with whom O. P. Carrillo had numerous financial ties, he refused to recuse and disqualify himself;

(2) in the case of State of Texas on relation of Jose R. Nichols versus Archer Parr, Cause No. 8890 in the district court for the 229th Judicial District of Texas, which involved the suspension and removal from office of a former political ally with whom O. P. Carrillo had publicly split and who was involved in heated competition for political control of the governmental entities in Duval County, he refused to recuse and disqualify himself;

(3) he conspired with others to improperly influence the membership and proceedings of the grand jury of Duval County impaneled in February, 1975;

(4) he conspired with others to dominate and control the Benavides Independent School District by arbitrarily suspending from their offices his political opponents on the school district board of trustees and appointing his political allies as replacements.

**ARTICLE III**

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo acted alone or conspired with others to divert the services of governmental employees to his personal benefit when he was not entitled to receive those services.

This conduct included but was not limited to one or more of the following:

(1) Cleofas Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership between O. P. Carrillo and another;

(2) Pat Gonzalez, while employed and being paid by Duval County, worked in the Farm and Ranch Store, which was a partnership owned by O. P. Carrillo and another;

(3) Francisco Ruiz, while employed and being paid by Duval County, worked as a welder on O. P. Carrillo's property;

(4) Oscar Sanchez, while employed and being paid by Duval County, worked in the construction of a reservoir on O. P. Carrillo's ranch;

(5) Patricio Garza, while employed and being paid by Duval County, worked on O. P. Carrillo's ranch.

#### ARTICLE IV

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to misapply government equipment, which he was not entitled to use, to his personal benefit.

This conduct included but was not limited to one or more of the following:

(1) the use of a backhoe owned or leased by the Duval County Water Control and Improvement District in the construction of a private building on his property;

(2) the use of equipment owned or leased by Duval County in the construction of a water reservoir on his property;

(3) the use of a truck, mounted with post-hole digging equipment, owned or leased by Duval County in the construction of fences on his property;

(4) the use of welding equipment and supplies owned or leased by Duval County to make repairs on his property;

(5) the use of trucks owned or leased by Duval County to haul equipment and materials to his property for his private use.

#### ARTICLE V

While holding office as district judge for the 229th Judicial District of Texas and, prior to that, while simultaneously holding office as county attorney for Duval County and a member of the board of trustees for the Benavides Independent School District, O. P. Carrillo conspired with public officials and others to violate the constitution, oaths of office, statutes, and public policy against public officials doing private business with governmental entities they serve.

This conduct included but was not limited to the sale of goods and services and the rental of equipment, either directly from the Farm and Ranch Store, an entity owned by O. P. Carrillo and another public official, or by sham transactions through Zertuche General Store and other business entities, to various governmental entities in Duval County when O. P. Carrillo and close relatives with whom he had a joint economic interest served as officers of those governmental entities.

#### ARTICLE VI

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo filed false and fraudulent financial statements with the Secretary of State for Texas.

#### ARTICLE VII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to charge and collect money from governmental entities for rentals of equipment that did not exist and for rental of equipment that the governmental entities did not use.

ARTICLE VIII

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Arturo Zertuche, who was not entitled to receive the funds.

ARTICLE IX

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Roberto Elizondo, who was not entitled to receive the funds.

ARTICLE X

While holding office as district judge for the 229th Judicial District of Texas, O. P. Carrillo conspired with others to defraud Duval County by causing county funds to be paid to Patricio Garza, who was not entitled to receive the funds.

\* \* \*

In all of this, O. P. Carrillo has acted in a manner contrary to the trust reposed in him as district judge and is guilty of gross violations of the constitution and statutes of this state, of the duties of his office, and of the Code of Judicial Conduct. By such conduct he has rendered himself unfit to hold the office of judge of the district court for the 229th Judicial District of Texas and he warrants trial and conviction, removal from office, and disqualification from holding any future office in this state, and the house of representatives, saving to itself the liberty to exhibit additional articles of impeachment against O. P. Carrillo at any future date, if it decides any are necessary, requests that O. P. Carrillo be required to answer the articles of impeachment against him.

Canales

Bill Clayton  
Speaker of the House

I hereby certify that H.S.R. No. 161 was adopted by the House, as amended, on August 5, 1975, by the following vote: Yeas 128, Nays 16.

Dorothy Hallman  
Chief Clerk of the House

The President requested the Counsel for the Respondent to waive a full reading of H.S.R. 161 at this time with the understanding that there would be a full reading at such time as the Senate resolved itself into a High Court of Impeachment.

Mr. Mitchell, Counsel for the Respondent, waived the reading at this time.

SENATE RESOLUTION 3

Senator Adams offered the following resolution:

BE IT RESOLVED BY THE SENATE OF TEXAS, That Justice Joe R. Greenhill, Chief Justice of the Texas Supreme Court, is invited to attend the session of the Senate, sitting as a court of impeachment, and to administer the following oath to

**EXHIBIT 2: Articles of Impeachment against Ferguson**

General Crane: Mr. President, the first thing in order, I presume, is the reading of the Articles of Impeachment. We will ask the Reading Clerk to read those now.

Senator Hanger: As well as the Answer—when the reading of the Articles is concluded we will ask that the Answer be read also.

The Chair: The Secretary will now read the Articles of Impeachment presented by the House of Representatives against the Governor of the State.

(Thereupon the Reading Clerk read the Articles of Impeachment, as follows, to wit):

**Articles of Impeachment.**

Articles adopted and exhibited by the House of Representatives in their name and in the name of the people of the State against James E. Ferguson, Governor of Texas, in maintenance and support of their impeachment against him and in accordance with the resolution adopted by Committee of the Whole House, which resolution was reported to the House of Representatives and by them adopted.

Article 1. That there was paid from the funds of the Canyon City Normal School deposited with the Temple State Bank on August 23, 1915, a note of \$5,000 together with \$600 interest due by James E. Ferguson to the First National Bank of Temple, Texas. That said amount has never been refunded to the State of Texas. That in part payment of the total due for the building of the Canyon City Normal College he used other funds, a portion of which belonged to the State, and the balance being in his hands as Governor, and deposited to his credit as Governor in the American National Bank of Austin, which acts constitute a violation of law.

Article 2. That James E. Ferguson received from former Governor O. B. Colquitt more than \$101,000, the proceeds from insurance policies on the Canyon City Normal School. That at the time said moneys were turned over to him they were on deposit in banks bearing interest at from four and one-half to five per cent and which was amply secured. That he placed about \$40,000 of same in the Temple State Bank, more than \$20,-

000 of which remained there for approximately one year, and that he deposited the other amounts in banks in which he was interested as a stockholder, and in the American National Bank, to which he shortly afterwards became indebted. That he received direct and personal profit as a stockholder of the Temple State Bank from the deposit placed with it; thus using and misapplying State funds for his individual benefit and profit.

Article 3. That James E. Ferguson testified under oath on March 11th and 12th, 1917, before the House Investigating Committee that he had made arrangements with the Houston National Exchange Bank to take up two certain promissory notes, one signed by A. F. Ferguson and one signed by J. H. Davis, Jr., each for the sum of \$37,500. That he further testified that he was not indebted to the Temple State Bank at that time. That as a matter of fact the indebtedness represented by the said notes was the personal indebtedness of the said James E. Ferguson, and the said notes had been executed by said A. F. Ferguson and J. H. Davis, Jr., at the instance of James E. Ferguson and for his accommodation. That he had guaranteed the payment of both of said notes, the makers whereof were utterly unable to pay them, which said fact was known to James E. Ferguson. That said notes were actually transferred to the Houston National Exchange Bank for a period of about ten days only with the endorsement of and guarantee of the Temple State Bank and the agreement to repurchase within a few days, and the added obligation that said Temple State Bank should maintain, during the period of time the notes should be held by said Houston Exchange National Bank, on deposit with said bank, an average daily and compensating balance in an amount equal to the total amount of said notes, to wit, \$75,000. That as a matter of fact said James E. Ferguson was still liable on said notes, and same were transferred only for a period of ten days, and that said transfer of the notes was not bona fide.

Article 4. That James E. Ferguson testified before the former House Investigating Committee within sixty days prior to his giving said testimony he had caused to be paid into

the Temple State Bank \$112,500 and \$15,000. In other words, \$127,500 in cash to the Temple State Bank. That as a matter of fact \$75,000 of said amount was represented by the A. F. Ferguson note and the J. H. Davis note of \$37,500 each, and that same were not paid to the Temple State Bank in cash, but were only transferred to the Houston National Exchange Bank to be held for a period of about ten days. That as a matter of fact said notes were still due by James E. Ferguson, because the makers within his knowledge were not able to pay same, and he had guaranteed same in writing to the Temple State Bank. That said transfer did not relieve the Temple State Bank of the excessive loan of James E. Ferguson, because said two notes were endorsed and payment guaranteed by the Temple State Bank; and the said James E. Ferguson and the Temple State Bank knew that after a period of about ten days said notes could be returned to the Temple State Bank. That said two notes were actually returned to the Temple State Bank, and that after said committee had adjourned the Temple State Bank was carrying again the same two notes in violation of the laws of the State of Texas.

Article 5. That James E. Ferguson testified under oath before the House Investigating Committee on March 11th and 12th, 1917, that he was not indebted to the Temple State Bank. That at said time he owed the said bank a note for \$11,243.07 on which there had been paid by him on February 13th, 1917, and less than a month before he testified, the sum of about \$3,029, leaving a balance due on said note of more than \$8,000 which was then owing to the Temple State Bank, and was not paid until June 16th, 1917.

Article 6. That there was deposited by James E. Ferguson in the Temple State Bank on or about the month of January, 1917, the sum of \$60,000 belonging to the State of Texas and in the possession of the Secretary of State by virtue of his office, said amount being represented by a check of the Secretary of State, although the State Treasury was open for the purpose of receiving same. That James E. Ferguson was a stockholder in said bank, owning more than one-fourth of the stock and that the said Temple State Bank and James E. Ferguson used said funds and re-

ceived the profit and benefit, the said James E. Ferguson receiving more than one-fourth of the profits and of the benefits.

Article 7. That on or about May 29th, 1917, James E. Ferguson accompanied T. H. Heard, president of the Temple State Bank, to the American National Bank at Austin, and the said T. H. Heard deposited to the credit of the Temple State Bank with the knowledge and consent of the said James E. Ferguson, the sum of \$250,000 of the funds belonging to the State of Texas and in the possession of the Secretary of State, said funds being represented by five checks drawn by the Secretary of State in the sum of \$50,000 each, although the State Treasury was then and there open for the purpose of receiving same. That the said James E. Ferguson owned more than one-fourth of the stock of the Temple State Bank and that said amount was used by the Temple State Bank for its own profit and benefit, more than one-fourth of which profit and benefit belonged to James E. Ferguson.

Article 8. That James E. Ferguson sought to have the State Highway Commissioner deposit State funds of that department with the Temple State Bank so that said bank might receive the profit and benefit from same, and he being a heavy stockholder would have received a portion of the benefits. That he also had, or permitted, other departments of the State government to deposit money with the Temple State Bank, or with other banks, to the credit of the Temple State Bank, said amounts belonging to the State of Texas, and that the Temple State Bank profited from the use of said funds, and the said James E. Ferguson received more than one-fourth of the profit and benefit.

Article 9. That the said James E. Ferguson has himself deposited, or caused or permitted to be deposited, funds in banks when the Treasury of the State of Texas was open for business, which funds should have been in the State Treasury. That he has used and permitted the use of funds by officers appointed by him for purposes other than the paying of same into the Treasury of this State, said funds being substantially as follows:

(a) That about the month of January, 1917, he deposited with the Temple State Bank the sum of \$60,000.00 of



funds in the possession of the Secretary of State.

(b) That on May 29, 1917, in company with T. H. Heard, President of the Temple State Bank, he permitted the deposit of funds in the possession of the Secretary of State to the credit of the Temple State Bank in an amount of \$250,000.00.

(c) That he permitted the Commissioner of the Insurance and Banking Department to deposit funds during the year 1916 with the Temple State Bank in an amount of more than \$101,000.00.

(d) That each and all of the above acts were knowingly and wilfully committed by the said James E. Ferguson.

Article 10. That on March 3, 1917, he stated in a public speech before the House of Representatives, which body had under consideration a resolution to investigate charges of official misconduct against him (one of said charges being borrowing more money from the Temple State Bank than was authorized by the laws of Texas), that he was not indebted to the said bank in any amount whatsoever, when as a matter of fact he was indebted to same at that time for more than was authorized by law.

Article 11. That in this investigation of James E. Ferguson by the Committee of the Whole House of Representatives said James E. Ferguson testified that during the Regular Session of the Thirty-fifth Legislature and shortly thereafter he received from parties certain currency in varying amounts, the total of which was about \$156,500.00. That said transaction is unusual and questionable, and that the said James E. Ferguson when questioned as to who loaned him this money declined to answer, although the officer of the Committee of the Whole appointed to pass on the admissibility of testimony ruled that he should answer, and the Committee sustained said ruling. That he is thus not only in contempt of the House and its Committee, but he insists that he is not required to give before the representatives of the people of Texas an accounting of said \$156,500.00 in currency which he received during sessions of the Legislature or shortly thereafter, and the receipt of such sums in currency, and the failure to account for same constitutes official misconduct.

Article 12. That James E. Ferguson had on deposit during the year 1916

in the American National Bank to his account as Governor certain sums of money belonging to the Adjutant General's Department of Texas aggregating more than \$3,000.00, said funds being the property of the State of Texas but set aside for that department. That in violation of the statutes of Texas he diverted these funds from their lawful purpose and paid same as a portion of the amount for the construction of buildings of the Normal College located at Canyon City.

Article 13. That at the former investigation of Governor James E. Ferguson he was specifically charged with the misapplication of moneys of the State of Texas in the purchase of groceries, feed, automobile tires, gasoline, etc. The committee appointed by the House of Representatives found that he did so misapply several thousand dollars and converted same to his own use in the purchase of the items above enumerated. That before that committee Governor Ferguson testified under oath that if the case of Middleton vs. Terrell, Comptroller, should be decided by the Supreme Court against him that he would refund to the State of Texas such amounts misappropriated by him in accordance with said decision. The Supreme Court long ago refused an application for writ of error and overruled a motion for rehearing, thus deciding against him, but James E. Ferguson is still indebted under said decision to the State of Texas for groceries, feed, automobile tires, gasoline, etc., which were for his private use but which were paid with State funds, and he has failed to pay same in accordance with his oath before said committee of the House of Representatives. The report of the House investigating committee stated that the charge of misapplication of funds should not justify the serious penalty of impeachment, inasmuch as Governor Ferguson had testified that he would promptly pay said amounts to the State, and that in the judgment of the committee this agreement to repay should be considered in connection with the good faith of the Governor. That the said James E. Ferguson was guilty of a misapplication of the appropriation made by the Legislature for fuel, lights, ice, and incidentals, in that he used same in the purchase of groceries, feed, automobile tires, gasoline, etc., for his private use,

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and that his refusal to repay said funds constitutes a continued misapplication of the public funds of Texas.

Article 14. That by an express provision of the Constitution and his oath of office the Governor is bound to enforce all laws of the State of Texas. The laws of Texas during the period of his administration expressly forbade State banks to lend money in excess of 30 per cent of its capital stock. This was known to the Governor, yet in violation of this provision of the law he induced the officers of the Temple State Bank to lend to him, James E. Ferguson, an amount far in excess of that authorized by law, which loans were made during the years 1916 and 1917.

Article 15. The people of this State have adopted an organic law, the Constitution of Texas, equally binding upon its highest officials and its humblest citizens. Article 7 of that Constitution provides for the maintenance and support of the University of Texas. That provision is a direction given by the people themselves in their most solemn manner to those who represent them in office as to their duties.

The Governor has vetoed or attempted to veto the entire appropriation for the University of Texas except the salary for one officer, thus in effect seeking to set aside that provision of the organic law requiring the support and maintenance of that institution, and to set aside the express will and judgment of the people of Texas. Though he had the legal power of veto, it was his sworn constitutional duty to again submit the question to the Legislature, which he has declared to the people of Texas that he would not do, and it was only when a session had been called for his impeachment and it was apparent that a quorum of the House would attend to consider that question, and as a last extremity, he consented to call a session of the Legislature and submitted the question of appropriations for the University of Texas.

Article 16. Section 30a of Article 16 of the Constitution of Texas provides for a Board of Regents for the University of Texas, who shall hold office for six years, their terms expiring one-third every two years. The purpose of the people of Texas in the adoption of this provision was to take the University of Texas and all other such State institutions from the control of politics, and to keep

the different boards from being under the control and domination of whomsoever might happen to be Governor. By Articles 2639 and 2640 of the Revised Civil Statutes of 1911 the Board of Regents are given the management of the affairs of the University of Texas with the discretion to remove members of the faculty when in their judgment it is deemed best. That it is the duty of the Governor, or any private citizen, to call attention of the Board of Regents to any mismanagement or improper practices at the University or any other State institution is readily conceded. The people themselves have given to the Board of Regents by constitutional enactment, which has been confirmed by statutory law, the sole right to judge of the truth of the charges and the punishment to be inflicted against members of the faculty. The Board of Regents in their sphere are just as supreme as the Governor is in his, each having both constitutional and statutory duties to perform, and each being answerable to the people of Texas. The Governor of Texas not only filed charges against certain members of the faculty, as he had a right to do, but after the members were exonerated by the Board of Regents he has sought to have the members of the faculty expelled from that institution because he desired it. He has thus sought to set aside the Constitution and law giving to the Board of Regents the discretion in matters of this kind and assert instead of their legal judgment his own autocratic will.

Article 17. Article 6027 of the Revised Civil Statutes of 1911 provides for the removal of members of the Board of Regents (among other officials) for "good and sufficient cause." The Governor has sought to remove members of the Board of Regents without such cause, has demanded resignations of others without reason, simply and only because he could not dictate to them as to how they should cast their votes in reference to matters arising before them. Such conduct was a clear violation of the law, and would serve to make inoperative the provision of the Constitution providing for six-year terms of office.

Article 18. The Governor of Texas has in public speech and published writing declared to the people of Texas that the faculty of the University are grafters and corruption-

ists, that they are liars, and that they are disloyal to their government. These are most serious charges. He made them first before the Legislature convened in January, 1917. The members of the faculty, in justice to themselves, to the institution which they served, and to the people of Texas, whose money supported and maintained that institution, applied to the Senate of Texas for a full and fair investigation. They sought in every way possible that the people of Texas might know every fact and circumstance connected with the management of the University of Texas. James E. Ferguson opposed that investigation and on the urging of his friends in the Senate that the controversy was ended, and that the charges would not be repeated, there was adopted the Dayton resolution by the Senate of Texas, which was for the purpose of settling the controversy. After the Legislature had adjourned and when investigation was no longer possible by the representatives of the people, the Governor again repeated the charges, becoming more and more vehement. If he knew the charges to be true, it became his sworn duty to cause the parties involved to be prosecuted. If he did not know them to be true (and the Board of Regents after a fair hearing found that they were not true), he is guilty of criminal libel and slander against the fair name of Texas and one of its most cherished institutions.

Article 19. The Governor of Texas has sought to use the power of his office to control members of the Board of Regents. The chairman of the Board of Regents had become surety on a bail bond, the case pending in Jones County, Texas. The defendant escaped and judgment was secured on said bond in the sum of \$5000 against the principal and sureties, one of the sureties being Wilbur P. Allen, chairman of the Board of Regents of the University of Texas. He applied to the Governor of Texas for the remission of the judgment, which he would have had to pay, and without good reason but only to influence his action as a member of the Board of Regents, James E. Ferguson as Governor remitted the forfeiture of \$5000, which, except for such action of James E. Ferguson, would have belonged to the people of Texas.

Article 20. That the said James E.

Ferguson has sought to improperly influence the courts of Texas in matters in which he had a personal interest, first:

(a) After he had received from the Thirty-fifth Legislature at its Regular Session a bill passed by that Legislature for the increase of the salaries of certain judges, among others being those of the judges of the Supreme Court of Texas, he wrote them a letter calling their attention to certain provisions of the Constitution of Texas, and after they had ruled against him, vetoed the bill and gave as one of his reasons the fact that that court had allowed him no more than \$4,000 salary.

(b) That while the case of Maddox vs. Dayton Lumber Company was pending in the Court of Civil Appeals at Beaumont, and after a motion for rehearing had been overruled, and in a case in which the Governor was a party, and the decision of said court being against him and his associates, he wrote to one of the members of that court who had asked an endorsement by him, declining to endorse him, and bitterly criticising the decision of that court in that case, and mailed copies of the letter to the other members of that court. That within a few days thereafter his attorneys filed a second motion for rehearing.

Article 21. That during the session of the Thirty-fifth Legislature James E. Ferguson, as Governor of Texas, submitted to the Senate of Texas the nomination of C. W. Woodman for confirmation as Labor Commissioner. The Senate of Texas refused to confirm the nomination. That the Governor then submitted to the Senate of Texas the name of Frank Swor, Deputy under C. W. Woodman, which nomination was confirmed by the Senate. But that he has failed and refused to qualify, and more than a reasonable time has elapsed since his appointment, but he has continued to act as deputy, and the said C. W. Woodman has continued to act as Commissioner. And knowing these facts, Governor Ferguson has failed and refused to make an appointment, and C. W. Woodman, although confirmation was refused him by the Senate of Texas many months ago, continued to hold the office and draw the pay. That it was the duty

of the Governor, when the Senate refused to confirm C. W. Woodman, to make another nomination, and in case the nominee refused to qualify, that it was his duty to make another appointment; but that he has failed and refused to do so in defiance of the Constitution of Texas and his oath of office.

In view of the premises the House of Representatives of the State of Texas does charge James E. Ferguson in the manner and by the means aforesaid, and that he did thereby render himself unworthy and no longer fit to exercise the duties incumbent upon the Governor of the State of Texas.

And the House of Representatives, saving to itself the liberty of presenting at any future date further articles of impeachment or other accusations against the said James E. Ferguson, and also of replying to his answer which he shall make under said articles, if he does so file an answer, and of offering proof to sustain each and all of the above articles and to each and all other articles or accusations which shall be required by them or which the case shall require, requests that the said James E. Ferguson be called on to answer the above Articles of Impeachment, and that in such proceedings the examinations, trials, and judgments thereof be had and given thereto as are agreeable to law and justice.

**Certificate.**

I hereby certify that the above and foregoing report of the Board of Managers appointed by the House of Representatives, together with the accompanying articles of impeachment against James E. Ferguson, Governor of the State of Texas, were duly passed by the House of Representatives of the State of Texas by the following vote:

Ayes . . . . . 74  
Nayes . . . . . 45

This the 24th day of August, A. D. 1917.

**BOB BARKER,**  
Chief Clerk House of Representatives.

The Chair: Is it the desire of

Counsel that the Secretary read the Answer of the Respondent?

Mr. Henry: Mr. President, we desire that the Answer be read now.

The Chair: The Secretary will read the answer of the Respondent, including the demurrers.

(Thereupon the Secretary read the Answer of the Respondent, James E. Ferguson, and the demurrer, which are as follows, to wit:)

**Answer of Governor Ferguson.**

Senate of the State of Texas, sitting as a Court of Impeachment for the trial of Honorable James E. Ferguson, Governor of Texas.

The answer of the said James E. Ferguson, Governor of the State of Texas to the articles of impeachment exhibited against him by the House of Representatives of the State of Texas.

The respondent respectfully submits to the Senate of the State of Texas, sitting as a Court of Impeachment, that none of the acts alleged and charged against him in any of the twenty-one articles presented to the bar of the Senate constitutes either high crimes or misdemeanors in office, a violation of the oath of office of respondent, official misconduct of respondent or a violation on the part of respondent of the Constitution and laws of the State of Texas, and of this respondent prays the judgment of this Honorable Court as to the sufficiency of each of said allegations.

**JAMES E. FERGUSON,**  
Respondent.  
**R. L. HENRY,**  
**CLARENCE MARTIN,**  
**B. Y. CUMMINGS,**  
**W. A. HANGER,**  
Attorneys for Respondent.

**I.**

This respondent demurs to the Articles of Impeachment herein presented to the Senate against him, and to each and every article thereof and says that they constitute no legal or sufficient presentation of impeachment against him for the reason that the same have been presented to the Senate by the House of Representatives at a special session of the Legislature, and that no allegation is made that the subject of impeachment was submitted to either

branch of the Legislature by the Governor, and that the said House of Representatives possessed no legal right to consider the subject of impeachment of this respondent under the Constitution and laws of the State of Texas, unless and except such subject was submitted to the Legislature by the Governor in his call of such special session or thereafter by appropriate message to such Legislature; and this respondent says that there was no submission to the Legislature by the Governor of the State of Texas of the subject of impeachment of which failure this Honorable Court will take judicial cognizance, and of this respondent prays the judgment of this Honorable Court.

II.

This respondent further specially demurs to Articles 1, 2, 12, and 13, because it appears from the face of such articles that the acts therein alleged and complained of are alleged to have been committed prior to November 7, 1916, and prior to January 16, 1917, the dates respectively of the election and qualification of this respondent to the office which he now holds; and that this respondent could not be impeached, legally, or under the provisions of the Constitution of the State of Texas for acts alleged to have been committed prior to his election and qualification to the office which he now holds; and no act alleged to have been committed prior to such election and qualification on the days and dates above mentioned can constitute high crimes and misdemeanors, a violation of this respondent's oath of office, official misconduct or a violation of the Constitution of the State of Texas, as applicable to the office which he now holds and for which impeachment charges are here presented, and of this respondent prays the judgment of this Honorable Court.

III.

This respondent further specially demurs to Articles 14, 15, 16 and 17 presented to this Honorable Court, and says the same do not constitute a high crime or misdemeanor, a violation of this respondent's oath, a violation of the Constitution of the State of Texas or official misconduct

in that on the face of the allegations in said articles it was at most and only an exercise of official discretion vested in him by the Constitution of the State of Texas, and of this respondent prays the judgment of this Honorable Court.

IV.

This respondent further specially demurs to Article 17, and says the same is insufficient and alleges no ground for impeachment, no violation of any official duty of this respondent, of the Constitution of the State of Texas, of his oath of office, in that the same at most alleges the doing of that which under the laws and Constitution of the State of Texas this respondent had a right to do; and such acts under the laws of the State of Texas not being subject to review, and there being no requirement to state the causes by which said removals, if any, were made could not be the basis of impeachment proceedings by the Legislature of the State of Texas or this Honorable Court, and of this respondent prays the judgment of this Honorable Court.

JAS. E. FERGUSON,  
Respondent.  
R. L. HENRY,  
CLARENCE MARTIN,  
B. Y. CUMMINGS,  
W. A. HANGER,  
Attorneys for Respondent.

For answer herein this respondent denies all and singular the allegations and statements in each and all of the articles herein filed, except as hereinafter set forth and explained.

JAS. E. FERGUSON,  
Respondent.  
R. L. HENRY,  
CLARENCE MARTIN,  
B. Y. CUMMINGS,  
W. A. HANGER,  
Attorneys for Respondent.

I.

For answer to Article 1, this respondent says that on or about the 24th day of January, 1915, and on various days and dates thereafter, prior to November 7, 1916, and January 16, 1917, after this respondent had been duly inaugurated as Governor of the State, there was delivered to him by his predecessors in office a sum of money approximately \$101,600, which had been paid to