

NO. 416-81913-2015; NO. 416-82148-2015; NO. 416-82149-2015

THE STATE OF TEXAS § IN THE DISTRICT COURT
V. § COLLIN COUNTY, TEXAS
WARREN KENNETH PAXTON, JR. § 416TH JUDICIAL DISTRICT

**STATE'S MOTION FOR CHANGE OF VENUE, OR IN THE
ALTERNATIVE, CHANGE OF VENUE ON COURT'S OWN MOTION**

TO THE HONORABLE GEORGE GALLAGHER, PRESIDING JUDGE:

THE STATE OF TEXAS, by and through its undersigned Collin County District Attorneys *Pro Tem*, BRIAN WICE, KENT SCHAFFER, and NICOLE DEBORDE, (“The Special Prosecutors”), in these matters, pursuant to TEX. CODE CRIM. PROC. Art. 31.02,¹ files its motion for change of venue, or, in the alternative, pursuant to TEX. CODE CRIM. PROC. Art. 31.01,² asking

1. Art. 31.02 provides, in pertinent part, that, “Whenever the district or county attorney shall represent in writing to the court before which any felony or misdemeanor case punishable by confinement, is pending, that, *by reason of existing combinations of influences in favor of the accused ... a fair and impartial trial as between the accused and the State cannot be safely and speedily had ...* the judge shall hear proof in relation thereto, and if satisfied that such representation is well-founded and that the ends of public justice will be subserved thereby, he shall order a change of venue to any county in the judicial district in which such county is located or in an adjoining district.” (emphasis added).

2. Art. 31.01 provides, in pertinent part, that this Court, on its own motion, and after notice and a hearing may order venue changed to any county beyond an adjoining district if it is satisfied that a fair and impartial trial cannot be had from any cause in the county in which the case is pending.

this Court to change venue on its own motion and would show as follows:

I. EXECUTIVE SUMMARY: TEAM PAXTON'S ALMOST TWO-YEAR LONG CRUSADE TO TAINT THE POOL OF PROSPECTIVE COLLIN COUNTY JURORS

“The opposition must understand the power of your client’s argument and what that will look like if your case goes to the jury.

An aggressive media strategy is vital to a campaign.”

Former Team Paxton Investigator Wayne Dolcefino, www.dolcefino.com

The State of Texas cannot get a fair and impartial trial in Collin County. Neither can the victims it represents. This issue is simply not in doubt.

Over the course of almost the last two years, as set out over these 57 pages, Paxton’s posse of spokesmen, supporters, and surrogates – a clique herein collectively referred to as “Team Paxton”³ – has embarked on a crusade clearly calculated to taint the Collin County jury pool. Team Paxton has utilized every conceivable form of mass media available – radio, television, print, and social media, especially Facebook – to vilify, malign, and defame the Special Prosecutors, the victims in the securities fraud counts, Byron Cook and Joel Hochberg, and, to add insult to injury, this Court. Team Paxton’s 22-month siege against these principals has

3. To be clear, the State makes no claim that “Team Paxton” includes any members of Paxton’s defense team.

not merely been waged in the media, in the court of public opinion, and, by importantly, in the hearts and minds of Collin County citizens who will receive a jury summons in this case. Team Paxton's incessant efforts at tainting the pool of prospective Collin County jurors – unparalleled and unprecedented in the annals of Texas criminal justice – include:

- suing the Special Prosecutors – *not once but twice* – in their official capacity on “behalf of the taxpayers of Collin County,”⁴ the very men and women who will make up the venire from which a jury will be chosen in these cases, for no other reason than to attempt to defund, and ultimately, derail this prosecution as well as to inflame the passions, prejudices, and biases of the jury pool.
- suing this Court in its unsupported and unsupportable ploy in civil court to improperly and collaterally attack this Court's lawful orders to pay the Special Prosecutors, before opting to non-suit this Court.
- accusing this Court of not merely “breaking the law” but “raping the taxpayers [of Collin County]” by enforcing its lawful orders to fund the Special Prosecutors.⁵

4. *Jeffery Blackard v. Attorney Pro Tem Kent A. Schaffer, in his official capacity, Attorney Pro Tem Brian W. Wice, in his official capacity, Attorney Pro Tem Nicole DeBorde, in her official capacity, et al*, trial court no. 380-05246-2015, “PLAINTIFF’S FIRST AMENDED ORIGINAL PETITION,” at 1. The trial court’s order dismissing this suit was affirmed by the Dallas Court of Appeals, ___ S.W.3d ___, 2017 WL 343597, Tex.App. No. 05-16-00408-CV, January 18, 2017, no pet.), but refiled on January 20, 2017. On January 27, 2017, the trial court denied Blackard’s request for a temporary restraining order seeking to defund the Special Prosecutors. On January 30, 2017, the Dallas Court of Appeals issued a stay prohibiting Collin County Commissioner’s Court from authorizing payment for the second round of invoices submitted by the Special Prosecutors. *In re Jeffery Blackard*, No. 05-17-00093-CV.

5. J.D. Miles, reporter for Dallas CBS affiliate KTVT, quoting Rick Santorum, “Former U.S. Senator Calls For Case Against Texas AG To Be Dropped,” www.dfw.cbslocal.com, February 4,

- running a series of radio ads attacking Messrs. Cook and Hochberg and the Special Prosecutors on WBAP-AM, a 50,000 watt clear channel station that is the highest-rated station in the Metroplex.⁶
- the illegal leaking of confidential work product of the Texas Rangers by a Team Paxton “investigator” in violation of the Michael Morton Act and this Court’s order that discovery in these matters be governed by the Morton Act.⁷
- releasing a four-minute long video on YouTube, posted to Paxton’s Facebook page, claiming that he is the victim of a political hit job orchestrated by the Special Prosecutors at the behest of Byron Cook, one of Paxton’s political adversaries.⁸
- the Collin County legislative delegation conspiring to “intervene in [Paxton’s] legal woes by pressuring county leaders to cut funding for the case” that Team Paxton has described in public forums as “judicial tyranny” and “in contempt of court.”⁹

Viewed against the backdrop of Team Paxton’s pattern and practice of attempting to taint the Collin County jury pool, and as explained in greater detail below, these long-standing and well-settled legal precepts compel the conclusion that this Court is constrained to change venue –

2017.

6. *See infra* at 28-31.

7. *See infra* at 34-40

8. “I’m standing and fighting!,” www.youtube.com, uploaded May 11, 2016. *See infra* at 20-22.

9. McGaughey, “Collin County lawmakers wanted to intervene in Paxton’s legal woes, text messages show.” www.dallasnews.com., October 20, 2016. *See infra* at 24-26. Predictably, Team Paxton has failed to explain how this Court, indeed, any court, could be in contempt of itself.

either on the State's motion or on its own motion:

- This Court has the inherent authority to order a change of venue without regard to whether a jury can be seated in Collin County.¹⁰
- This Court has the inherent authority to order a change of venue without regard to Paxton's obvious, understandable, and tactical desire to be tried in Collin County.¹¹
- If this Court changes venue on his own motion "from any cause," "[i]t is difficult to envisage a state of facts by which [an appellate court] would be warranted in finding that an abuse of discretion has occurred."¹²
- This Court need not elicit evidence to support its ruling changing venue on its own motion and need only offer the parties a chance to be heard on the matter.¹³
- This Court's decision to change venue on its own motion will be upheld on appeal "notwithstanding the strong showing by [Paxton] that a fair trial could be had in the county where the prosecution was begun."¹⁴

10. *Allen v. State*, 488 S.W.2d 460, 461 (Tex.Crim.App. 1972)(rejecting defendant's claim the trial court was first required to make an attempt to select a jury before it could change venue on its own motion).

11. *Garza v. State*, 974 S.W.2d 251, 259-60 (Tex.App.-- San Antonio 1998, pet. ref'd) (defendant has no state or federal constitutional right to be tried in his home county, and no interest in being tried in his home county simply because he would preferred to be tried there).

12. *Spriggs v. State*, 289 S.W.2d 272, 273 (Tex.Crim.App. 1956); *Cook v. State*, 667 S.W.2d 520, 523 (Tex.Crim.App. 1984)(quoting *Spriggs* with approval); *Brimage v. State*, 918 S.W.2d 466, 508 (Tex.Crim.App. 1994)(op. on rehr'g)(quoting *Spriggs* with approval).

13. *Brimage v. State*, 918 S.W.2d at 508.

14. *Spriggs v. State*, 289 S.W.2d at 273

- This Court’s decision to change venue will be upheld on appeal if it is satisfied “that a trial, alike fair and impartial to the state or the accused, cannot be held in the county, without reference as to how or from what facts and circumstances such conclusion was reached.”¹⁵

Well over 130 years ago, the Court of Appeals of the State of Texas, at that time the court of last resort in criminal cases,¹⁶ wrote, “The law is exceedingly jealous of the purity of the jury box, and always has been. It seeks to shut up every avenue through which ... any improper influence, could possibly make an approach to it.” *Pierson v. State*, 18 Tex. App. 524, 559 (1885). Eight decades before this fundamental and guiding precept was laid down, the United States Supreme Court made it clear that, “Certain implied powers must necessarily result to our Courts of justice from the nature of their institution, [powers] which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.” *United States v. Hudson*, 7 Cranch 32, 34 (1812). As set out below, given Team Paxton’s deliberate, protracted, and far-reaching attempts to taint the Collin County jury pool, the only way that this Court

15. *Id.*; *Berwick v. State*, 194 S.W.2d 768, 770 (Tex.Crim.App. 1946)(same).

16. The Texas Court of Criminal Appeals was not created until the adoption of a constitutional amendment on September 22, 1891. www.tarltonapps.law.utexas.edu.

can guarantee the purity of the jury box in this matter, and to ensure “the impartiality [that] is the cornerstone of the fairness, security and advantages of trial by jury,” *Pierson v. State*, 18 Tex. App. at 559, is to exercise its implied powers and inherent authority by changing venue on the State’s motion, or alternatively, on its own.

II. THE FACTUAL NARRATIVE THAT COMPELS A CHANGE OF VENUE

“Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of the facts and evidence.”

John Adams

1. Team Paxton’s Prolonged Assault on the Motives, Character, and Integrity of the Special Prosecutors, Victims Byron Cook and Joel Hochberg, and this Court

On April 21, 2015, Kent Schaffer and Brian Wice were appointed by Collin County District Judge Scott Becker pursuant to TEX. CODE CRIM. PROC., art. 2.07, “to serve as Collin County Criminal District Attorneys *Pro Tem* in this matter for the purposes of assisting in the investigation and, if warranted, the prosecution of Ken Paxton for the securities law complaints currently under investigation by the Texas Rangers.” In May of 2015, their appointment was extended to encompass the investigation, and, if warranted, the prosecution of Ken Paxton for any and all offenses

arising out of Ken Paxton’s alleged violation of the Texas Securities Act.”¹⁷ Before the ink was dry on their appointment forms, indeed, well before a Collin County grand jury indicted Paxton on first-degree felonies and one third-degree felony, Team Paxton began what was, and what continues to be, a non-stop assault on the motives, character, and integrity of the Special Prosecutors. Utilizing television, radio, print media, and social media, notably Facebook¹⁸ and YouTube, Team Paxton has accused the Special Prosecutors of:

- “making a mockery” of our criminal justice system¹⁹
- having been “unlawfully appointed by Collin County District Judge Scott Becker.”²⁰
- “hijack[ing] the criminal justice system to use it as a political weapon”²¹
- running up a tab “expected to reach into the millions” and

17. Nicole DeBorde was appointed as a third Attorney *Pro Tem* in August of 2015.

18. Some particularly virulent Facebook by members of Team Paxton posts have likened the Special Prosecutors to Satan, the evil-doer Haman in the Old Testament, and compared Paxton’s prosecution to the killing of Jesus. *See e.g.*, n. 61, *infra*.

19. Former Team Paxton spokesperson, Anthony Holm, op-ed, Austin American Statesman, July 27, 2015

20. Tony McDonald, general counsel for Team Paxton adjunct Empower Texans, “Feds: Paxton Prosecutor is Motorcycle Gang Kingpin,” www.empowertexans.com, January 5, 2017.

21. *Id.*, “SEC dismissal latest evidence of bogus Paxton prosecution,” October 7, 2016.

“destroy[ing] a good man’s life while ripping off the [Collin County] taxpayers²²

- being “directly connected to very real crimes”²³
- “charging outrageous fees for a political vendetta that will outrage the taxpayers of Collin County”²⁴
- being “loose-lipped, liberal Houston Democrat publicity hounds”²⁵
- orchestrating “a political hit-job [on Paxton] to inappropriately influence the grand jury”²⁶
- obtaining indictments that are “predetermined” and “spurious” and an “embarrassment to the Texas criminal justice system”²⁷
- “mak[ing] direct contact with some of the jurors to lobby them to indict Paxton”²⁸

21. *Id.* “Win or lose, Schaffer and Wice stand to earn millions prosecuting Paxton if the Collin County Commissioners Court agrees to pay them at the rate guaranteed by Becker.”

22. *Id.* McDonald, of course, offers no evidence that Wice, who is not connected to the Bandidos litigation, has been “directly connected” to any crime, let alone “very real crimes.”

23. Team Paxton supporter Jeffery Blackard, who has sued the Special Prosecutors “on behalf of the taxpayers of Collin County as recounted, *infra*, quoted in the Dallas Morning News, April 29, 2016.

24. Holm, quoted in the Lubbock Avalanche Journal and Texas Tribune, July 29, 2015.

25. Holm, quoted in the Texas Tribune, July 2, 2015.

26. Team Paxton supporter, Midland oilman, and nominal chairman of the board for Empower Texans, Tim Dunn, quoted in the Houston Chronicle, September 1, 2015.

27. *Id.* Of course, Dunn has never offered an iota of evidence to buttress his inane and libelous claim of criminal wrongdoing on the Special Prosecutors’ part. In reality, and unconstrained by what he believes are “facts,” Dunn was clearly unaware the attorney who allegedly made contact with grand jurors was Ty Clevenger, as the latter acknowledged in his blog. See www.lawflog.com, “Conflict of interest? The Collin County DA and the Texas Attorney General are in business

- lacking experience to handle [Paxton’s] high-profile prosecution²⁹
- hoping for a \$2 million payday³⁰
- “fleecing the taxpayers of Collin County”³¹
- “collecting ... over \$300,000 ... over a bill expected to be in the millions .. for a job that doesn’t need doing.”³²
- “building incredibly lucrative practices defending people charged with crimes – including drug and sex crimes – who Paxton tries to put in prison”³³
- built their careers defending the sort of child molesters and Mexican drug cartel leaders Paxton was elected to prosecute³⁴
- “being the Geraldo Rivera of Houston”³⁵

together, and their partnership may have diverted millions from taxpayers,” March 23, 2015; *Id.*, “Bad news for Texas AG Ken Paxton: the grand jury has left the reservation,” April 8, 2015.

29. Holm op-ed, Austin American Statesman, July 27, 2015

30. Team Paxton propagandist Jon Cassidy, “Court may be bending rules for Paxton prosecutors,” www.watchdog.org, September 25, 2015.

31. Tanya Eiserer, reporter for Dallas ABC affiliate WFAA-TV, quoting Collin County Judge Keith Self, January 7, 2016.

32. Radio ad airing on WBAP-AM, the highest-rated AM station in the Dallas-Ft. Worth media market the week of November 1, 2016, sponsored by [watchdog.org](http://www.watchdog.org), an organization fronted by Dunn. *See infra* at 28-31.

33. Holm, quoted in the Lubbock Avalanche Journal and Texas Tribune, July 29, 2015.

34. *Id.*

35. Holm op-ed, Austin American Statesman, July 27, 2015. In fairness to Mr. Schaffer and Ms. DeBorde, this invective was directed at Attorney *Pro Tem* Wice.

- continuing a prosecution that at least three other entities – the Texas State Securities Board, the Travis County and Dallas County District Attorneys’ Offices – have thoroughly reviewed and each chosen not to prosecute³⁶
- having a rock star’s entourage, including a Texas Ranger³⁷
- billing for expenses some attorneys say are not legally valid³⁸
- wanting a blank check to support a politically-driven prosecution.³⁹
- taking advantage of the taxpayers of Collin County⁴⁰
- “work[ing]” with former Collin County District Judge Chris Oldner “to procure [sic] first-degree felony indictments against Paxton”⁴¹
- billing the taxpayers of Collin County for gold-plated justice⁴²
- using their office to unlawfully commandeer the Texas Rangers with

36. Holm, quoted in the New York Times, July 2, 2015.

37. Collin County Judge Keith Self’s web site, www.keithself.com, March 14, 2016.

38. CBS Dallas affiliate KTVT News 11, January 7, 2016.

39. Statement of Collin County State Representative Jeff Leach, October 20, 2016.

40. Dallas affiliate WFAA-TV, January 8, 2016, quoting Collin County Judge Keith Self.

41. McDonald, “SEC dismissal latest evidence of bogus Paxton prosecution, www.empowertexans.com, October 7, 2016. While McDonald claims to be a “licensed and practicing attorney,” who was graduated from the University of Texas Law School in 2012, *id.*, he apparently slept through that portion of Texas Criminal Law & Procedure that indictments are “procured” [sic] by grand juries and not prosecutors or judges. Moreover, McDonald’s specious and scurrilous allegation that the Special Prosecutors “worked” with Judge Oldner “to procure” indictments against Paxton accuses them without proof of violating either/or § 39.02 of the Penal Code (“Abuse of Official Capacity”) and §39.02 (“Official Oppression”).

42. Collin County Judge Keith Self quoted in the Dallas Morning News, January 12, 2016.

the naked and unrestrained abuse of that office to violate Texas Penal Code, § 39.02 (“Abuse of Official Capacity”) and to intimidate Jeffery Blackard, who has sued the Special Prosecutors, into dropping his case.⁴³

Team Paxton has not been content to limit its mass-media driven *ad hominem* attacks to the Special Prosecutors. A more sinister segment of Team Paxton’s effort to taint the pool of prospective Collin County jurors is its well-planned and deliberate effort to vilify, malign, and demonize Byron Cook and Joel Hochberg, the victims in the securities fraud counts, on radio and television, in the print media, in social media, and even in a civil suit filed against them by Chip Loper, the man who is the trustee for Paxton’s blind trust.⁴⁴ Its ploy in tainting the pool of prospective jurors also extends to Wayne Dolcefino, one of its now-cashiered “investigators” engaging in manifestly bad-faith conduct constituting contempt of this Court by illegally leaking the confidential work product of the Texas Rangers in violation of the Michael Morton Act and this Court’s order that discovery in these matters be governed by the Morton Act.

And, of more recent vintage, in a predictable maneuver ripped from

43. “‘Abuse of power’ alleged in Paxton case,” www.watchdog.org, March 21, 2016.

44. *Calco Land Development, L.L.C. v. Unity Resources, L.L.C., et al.*, cause no. 417-04885-2016 (417th District Court of Collin County, Texas). *See infra* at 31-34.

the play book of those who insist on attacking the referees, Team Paxton's offensive has encompassed repeated assaults on the character, integrity, and motives of this Court.⁴⁵

And that is just the half of it.

In an unprecedented ploy without parallel in the annals of Texas criminal justice, Jeffery Blackard, one of the most vocal and deep-pocketed members of Team Paxton, has sued the Special Prosecutors – *not just once but twice* – in a not-so-veiled attempt to de-fund this prosecution “on behalf of the taxpayers of Collin County,”⁴⁶ *the very men and women who make up the venire from which a jury will be chosen in these cases*. As a result of Blackard's not-so-veiled declaration of war against the Special Prosecutors, the Collin County Judge and four County Commissioners, four Collin County state representatives and a state senator, have all piled on. The goal of these combatants is clear: avail themselves of the Dallas Metroplex print and electronic media, as well as all forms of social media, to irreparably taint the Collin County potential jury pool by sending out the indelible and unmistakable message – long before jury

45. See p. 3, *supra*.

46. See pp. 16-19, *supra*.

selection – that Messrs. Cook and Hochberg are men whose motives and, by extension, credibility is suspect, and, as a coda to this vitriolic refrain, the Special Prosecutors are the sworn enemies of every Collin County taxpayer who might be called to serve as a juror in this matter.

2. Ken Paxton: Accused Felon/Collin County's Favorite Son

Paxton is not the prototypical Collin County criminal defendant being made to stand trial for a trio of felonies: he is one of Collin County's favorite sons. Paxton is the first statewide elected official from Collin County since 1866.⁴⁷ Paxton has never lost an election, winning fifteen different primary, runoff and general elections, nine contested and six uncontested elections, over a twelve-year period.⁴⁸ Paxton served as a state representative from District 70 from 2003 to 2013, as a state senator from District 8 from 2013-2015, and as Texas Attorney General since 2014.⁴⁹ In the three-way Republican primary for Attorney General, Paxton defeated Dan Branch and Barry Smitherman, winning 68% of the vote in

47. Brubaker, "Collin County GOP Update," www.rwgnt.org, November 11, 2014.

48. All of Paxton's election results are available on the official website of the Texas Secretary of State. www.sos.state.tx.us/elections/historical/index.shtml.

49. All references are from www.ballotpedia.org.

Collin County; in the run-off, he bested Branch with 70% of the Collin County vote; and in the general election, he beat Sam Houston with 66% of the Collin County vote. In his unbeaten electoral streak, Paxton has collectively garnered almost 600,000 votes from Collin County residents.

Moreover, and of equal importance, it is the conventional wisdom that almost every officeholder in Collin County has either contributed money to Paxton, obtained their position – whether elected or appointed – with his assistance, or both. In short, Paxton is a political powerhouse in Collin County where he enjoys the ultimate home field advantage.

3. Paxton Sows the First Seeds of Conflict

Paxton fired the first salvo by filing his “Objection to Excessive or Interim Payment of Fees to Attorneys Pro Tem” on December 28, 2015, likely the first time any criminal defendant has asked a judge to restrict payment to the individuals tasked with prosecuting him. While this Court quickly rejected his claim, Paxton nevertheless stoked public resentment against the Special Prosecutors on grounds wholly unrelated to the merits of this case, including his baseless accusations that:

- There was a “secret deal by Collin County District Court Judge Scott Becker to allow legal fee payments to the attorneys pro tem [sic] that are far in excess of the rates and limits established by Collin

County.”

- “Becker **secretly** agreed to pay the Attorneys *Pro Tem* \$300.00 per hour.” (emphasis in original).
- “Collin County has adopted and published a fee schedule in accordance with this law and the ‘\$300.00 per hour “reportedly agreed upon by Judge Becker far exceeds the amounts in that fee schedule, which is “*without exception.*”⁵⁰ (emphasis added)

4. *Jeffory Blackard Files Suit Against the Special Prosecutors: Round 1*

A mere twenty-four hours after Paxton fired the first shot, Team Paxton political supporter, wealthy real estate developer Jeffory Blackard, filed civil suit in Collin County District Court⁵¹ seeking a temporary restraining order “on behalf of himself and all taxpayers in Collin County, Texas.” Not coincidentally, his suit parroted Paxton’s baseless motion this Court summarily rejected. Named as defendants were Collin County Judge Keith Self, County Commissioners Chris Hill, Susan Fletcher, Cheryl Williams, Duncan Webb, County Auditor Jess May, and this Court. No doubt recognizing that suing this Court was, simply put, an ill-advised and unsound stratagem, Blackard quickly non-suited this Court, and filed

50. Of course, as this Court correctly concluded on January 6, 2016, Paxton’s assertion that the fee schedule provided “no exception” was cut from whole cloth and demonstrably false.

51. After the Collin County District judge to whom the case was assigned quickly recused himself, the matter was transferred to Dallas County Judge Mark Greenberg.

an amended lawsuit that named the Special Prosecutors, the trio of protagonists he sought to demonize “on behalf of,” but more importantly, in the hearts and minds of, “all taxpayers in Collin County.”⁵²

At the January 11, 2016 session of Commissioners Court, Blackard made sure to allude to *not one, but “two corrupt Collin County judges,”*⁵³ making the absurd claim that Judge Becker budgeted \$2,000,000 to pay the three Democratic Special Prosecutors from Houston who were in over their heads. Blackard’s wife also took the podium to rant about the “true corruption” in Collin County, lamenting it was outrageous that “millions of dollars” were being spent, ostensibly by the Special Prosecutors, on this “witch hunt.”

Tellingly, but not surprisingly, Blackard’s efforts at advancing the narrative initially crafted by Paxton met with the same end as Paxton’s “objections”; Blackard’s civil suit was promptly tossed.⁵⁴ But the damage to the Special Prosecutors in the court of public opinion had already been

52. See n. 4, *supra*.

53. No doubt alluding to Judges Scott Becker and Chris Oldner whom Blackard erroneously referred to as “Oldham.” This video is available at www.collincountytex.gov (Commissioners Court Videos).

54. See n. 4, *supra*.

done; Blackard's unfounded avowals had already received widespread play in the mainstream media and social media, including his laundry list of unfounded and unwarranted accusations:

- the Special Prosecutors have sought to unjustly, unfairly and illegally enrich themselves at the expense of Collin County taxpayers.
- paying the Special Prosecutors "would constitute an illegal expenditure of taxpayer funds."
- "Why are Collin County taxpayers paying these unbelievable amounts of money ... basically for this political witch hunt."
- the Special Prosecutors have abused the powers of their office by using the Texas Rangers to intimidate him into dropping his suit in violation of Texas Penal Code, § 39.02 ("Abuse of Official Capacity.").
- because the Special Prosecutors' fees are "outrageous," "When Collin County taxpayers find out the truth about how much they're spending for a political vendetta, they're going to be outraged."

Having essentially declared war on the Special Prosecutors "on behalf of all the taxpayers in Collin County," Blackard passed the baton to his natural allies: Collin County Judge Keith Self and the four Collin County Commissioners, in the hope they would turn up the heat against the Special Prosecutors in the court of public opinion, and, by extension, in the hearts and minds of prospective Collin County jurors. True to form, they did not disappoint him.

5. *All Politics is Local: Commissioners Court Has Paxton's Back*

Because all politics is local, it logically follows that Team Paxton's natural allies are Collin County Judge Keith Self and the four county commissioners.⁵⁵ It took little or no time for Judge Self to open a second front in Blackard's war on the Special Prosecutors, accusing them of:

- "fleecing the taxpayers of Collin County,"⁵⁶
- billing the taxpayers of Collin County for "gold-plated justice,"⁵⁷ and
- having a rock star's entourage, including a Texas Ranger.⁵⁸

After meeting in executive session of Commissioners Court on January 11, 2016, Judge Self asked the Special Prosecutors to resign and be replaced by a neighboring district attorney who would work for free,⁵⁹

55. Public records reflect that Judge Self gave Paxton a total of \$979 in 2003 and 2004 for his Texas House campaign, and that Self's campaign committee also gave Paxton \$5,000 in his 2014 race for attorney general. Their long-standing friendship dates back to Paxton and Self being teammates on their high school basketball team. www.keithself.com/testimonials. Commissioners Cheryl Williams and Susan Fletcher each donated \$250 to Paxton in November 2013. Lindell, "Collin County seeks to cut fees for Ken Paxton prosecutors," www.statesman.com, September 9, 2015.

56. Eiserer, quoting Collin County Judge Keith Self, January 7, 2016.

57. Self, quoted in the Dallas Morning News, January 12, 2016.

58. Self's web site, March 14, 2016.

59. Ironically, one of Commissioner Hill's Facebook friends pointed out how the movie Judge Self wanted to produce would end. "And as for the argument that this [case] could have gone to a neighboring DA, *no one would have touched it. Look at what has happened to those who did.*" (emphasis added).

and an “expert” in securities fraud investigations, who just happened to live down the street from him. Although Commissioners Court voted to pay the Special Prosecutors’ initial invoices, Commissioners Fletcher and Hill,⁶⁰ who have long railed against the Special Prosecutors’ fees on their Facebook pages – much to the adulation of their myriad followers and potential jurors – voted against following this Court’s lawful order.

6. Paxton Takes to YouTube to Tell Supporters He is Being Framed

To no one’s amazement, Paxton has unhesitatingly used social media to spread his self-styled gospel to potential jurors in Collin County that he is the victim of, in the words of Team Paxton’s varsity, a political hit job orchestrated by Special Prosecutors looking to pad their IRAs without regard to truth, justice, or the American way.⁶¹ On May 11, 2016, not

60. As Hill pointed out in a January 7, 2016 post, “Every taxpayer (*i.e.*, potential juror) should take notice” of the widely-accepted belief the Special Prosecutors were, in the words of Judge Self, “fleecing the taxpayers of Collin County.”

61. There is perhaps no more rabid a varsity cheerleader on Team Paxton, at least on social media, than Michelle Smith, who identifies herself variously as “Senior Executive Assistant” and “Political Director” and “Former Outreach Director” to “Attorney General Paxton.” In one of her more memorable postings on October 7, 2016, at 6:10 a.m., Smith posted a link to a Breitbart article and railed, “I don’t know how anyone can read this article, and not see this as a ... WITCHHUNT! [sic]. ... Friends, remember when they wanted to kill Jesus, an innocent man? No judge wanted to clear him, so they kept passing him from Judge to Judge because they knew he was INNOCENT! .. This is political witchhunt [sic] motivated by power. [Paxton] knows God has appointed him for such a time as this...” She has continued her *ad hominem* rants against the Special Prosecutors with a more recent posting to Team Paxton followers on January 5, 2017, that, “If you don’t see that these men prosecuting General Paxton are evil men, you are blinded. Just saying. By the way, if you live in

coincidentally, on the eve of oral arguments before the *en banc* Dallas Court of Appeals on his pre-trial writs of habeas corpus,⁶² Paxton released a four-minute long video on YouTube, posted to his FaceBook page, one he bragged could not be filtered by “by liberal reporters, spin doctors, and political opponents,” claiming:

- “These charges are false and I will prevail against them in court. The public will see for themselves that [the charges] are, at their roots, politically motivated. It’s not a coincidence that the chief witness against me is a political adversary of mine.”⁶³

Paxton’s ploy came perilously close to violating this Court’s long-standing order that he, as well as the lawyers on both sides, abide by Rule 3.07 of the Texas Disciplinary Rules of Professional Conduct prohibiting the making of “an extrajudicial statement that a reasonable person would

Collin County, you are paying this guy thanks to Judge Scott Becker and three of your county commissioners.” Earlier that day, Smith excoriated both the Special Prosecutors and Judge Becker, calling the former “bad guys from Houston ... horrible bad men” for whom Judge Becker is “100% responsible” having made a “secret deal with these guys.”

61. A mere four weeks later, the *en banc* court of appeals unanimously affirmed this Court’s denial of pre-trial habeas relief, a ruling the Court of Criminal Appeals declined to disturb. *Ex parte Paxton*, 493 S.W.3d 292 (Tex.App.– Dallas 2016, pet. ref’d)(en banc).

62. True to form, Paxton’s assertion is, at best, half-true. In fact, his alleged “political adversary,” fellow Republican State Representative Byron Cook, is but one of the two “chief witnesses” against him in the two first-degree securities fraud cases, with Joel Hochberg being the other. Moreover, while Paxton asserts, as he must, that Cook is now his “political adversary,” he can run, but cannot hide from the true nature of his relationship with Cook: when Paxton was first elected as a state representative in 2003, even Paxton will concede Cook was a mentor.

expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicatory proceeding.” Regardless of whether Paxton’s stratagem violated Rule 3.07, his intent could not have been more clear: sending forth *The Word* to potential Collin County jurors that he is a latter-day Jean Valjean hounded by Special Prosecutors channeling Inspector Javert in a 21st Century version of *Les Miserables*.

7. Team Paxton Keeps the Heat on Commissioner’s Court

Nine months later, after Blackard’s civil suit was tossed by Judge Greenberg, and Blackard’s request for a temporary restraining order was jettisoned by the Dallas Court of Appeals, Blackard and other members of Team Paxton, were back before Commissioner’s Court to remind them that they owed it to the taxpayers *cum venire* members, to keep this Court, and by extension, the Special Prosecutors from holding them as economic hostages. As reported by Breitbart Texas, on October 26, 2016, a number of speakers, including Blackard and Hiram Sasser, Paxton’s former chief of staff, addressed the issue of whether the commissioners should take steps to avoid complying with this Court’s lawful order setting compensation for the Special Prosecutors. At this public session, Blackard

once again railed that the potential jury pool comprised of Collin County taxpayers “are absolutely irate” at what this Court has agreed to pay the Special Prosecutors, and that they have every reason to question the expenditure of “\$900,000, or \$2 million dollars of [the venire’s] money, on [Paxton’s] failure to register.”⁶⁴ Other members of Team Paxton urged the commissioners “to contest [this] Court’s order,” described the Paxton prosecution as “an obvious witch hunt,” rehashed issues of alleged judicial misconduct this Court has already rejected, and urged their elected local leaders not to “play into the hands of those [presumably the Special Prosecutors] who wish to destroy everything we [potential jurors] believe in.” One Collin County resident declared of this Court’s payment order, “the only people that think [the order] is a good idea, is [sic] [the Special Prosecutors] and [this Court and Judge Becker] ... [e]veryone else thinks it’s a bad idea.” Sasser led the anchor leg of the relay, describing the Special Prosecutors’ bills, (which Breitbart, parroting watchdog.org., wrote without a shred of credible evidence, could run over two million dollars),

64. Predictably, Blackard sought to minimize and denigrate the third-degree felony of failing to register as an investment adviser representative leveled against Paxton, likening it, without regard to the two first-degree securities fraud counts that carry a maximum punishment of life or 99 years in prison, to “fail[ing] to get a driver’s license that year.”

as “outlandish,” when “there was no reason to spend a penny” on this prosecution.

When the dust had settled, the County Commissioners unanimously adopted a resolution their constituents in the jury pool could be proud of. They promised “a careful review” of this Court’s future payment orders, as well as appellate review to stay any such order by this Court by filing a writ of mandamus in the Dallas Court of Appeals. But that was far from the end of the discussion – at least for public consumption.

8. “What can we do to move the ball toward that goal line?”

But this resolution was apparently not enough for the political wing of Team Paxton – the Collin County legislative delegation – who opted to try to take matters into their own texting hands. On October 20, 2016, four Collin County state representatives⁶⁵ and a state senator⁶⁶ sent to the statehouse in Austin by the very people comprising the jury pool “debated intervening in Ken Paxton’s legal woes by pressuring county leaders to cut

65. Jodie Laubenberg, Jeff Leach, Scott Sanford, and Matt Shaheen.

66. Van Taylor

funding for the case,”⁶⁷ funding Team Paxton has repeatedly described as “judicial tyranny” and “in contempt of court.” This series of text messages included the following:

- “We clearly want to help Ken.” (Jodie Laubenberg).
- “Basically we are daring Judge Gallagher to hold Collin County in contempt of court if we are successful in convincing Keith [Self] to pay according to state law and not according to [Judge Gallager’s] orders. Right?” (Scott Sanford).
- “I’ll ask Keith [Self] if they lowered the fees and discuss options to stop [this Court’s] payment.” (Matt Shaheen).
- “All of us agree (hopefully) on the end goal. Question is what can we do to move the ball toward that goal line.” (Jeff Leach).

Whether the Collin County legislative faction moved the ball into the Red Zone, let alone scored, is unclear; what *is* clear is that they were bent and intent on “helping Ken” even while they “dared” this Court to “hold Collin County in contempt” for disobeying its lawful order, and doing what they could to defund the Special Prosecutors. But the heads of Collin County government were still not done trying to defund and derail this prosecution on behalf of Team Paxton, even if it meant running up their

66. McGaughey, “Collin County lawmakers wanted to intervene in Paxton’s legal woes, text messages show.” www.dallasnews.com., October 20, 2016.

own considerable legal tab in the process. On November 17, 2016, the Team Paxton cabal that had declared war against the Special Prosecutors “on behalf of all taxpayers of Collin County, Texas,” took aim, but, true to form, only managed to claim an innocent bystander in the crossfire.

9. Collateral Damage: Commissioners Vow “to Stiff a Public Defender”

On November 17, 2016, Collin County Commissioners Court voted 3:2 to block payment to J. Matthew Goeller, a McKinney defense attorney who has provided legal services to Collin County for over 20 years.⁶⁸ As recounted by the Dallas Morning News:

In an attempt to lay the legal groundwork to quit funding Texas Attorney General Ken Paxton’s prosecution, Collin County is refusing to pay [J. Matthew Goeller] a longtime local attorney for his work in defending indigent clients. ...

The commissioners aren’t refusing to pay Goeller because he didn’t do his job.⁶⁹ They’re doing so because they hope to set the stage to refuse future payments to the three lawyers prosecuting Paxton’s fraud case.

68. McGaughey, “Collin County officials have new plan to avoid paying for Ken Paxton’s case: Stiff a public defender.” www.dallasnews.com, November 17, 2016.

69. The Commissioners could not have picked a more competent, hard-working, and sympathetic advocate to “stiff” to forward their own self-serving agenda. Goeller, “[O]nce a top North Texas defense attorney in [Collin County]” is a veteran criminal lawyer board-certified in criminal law by the Texas Board of Legal Specialization. “Goeller was recently in a bad car crash that’s left him with some memory loss [and is] now rebuilding his practice in part on cases like the one for which the county [stiffed] him.” Ironically, he is also a Republican precinct chair in Frisco, Texas. *Id.*

*The decision means Collin County taxpayers could spend tens of thousands of dollars to fight paying a man who did nothing wrong, and whose job is unrelated to the attorney general or his legal troubles, in the hopes of cutting off funding for Paxton's prosecution.*⁷⁰ ...

County Judge Keith Self, who joined Commissioners Duncan Webb and Cheryl Williams, to supply the tie-breaking vote, channeled the irony of their decision by declaring, “This looks like it’s going to be one of those ironic things that we may pay more per hour for an appellate lawyer than we did for the special prosecutors.”⁷¹ Without a County Attorney’s Office to carry the commissioners’ water on appeal, Self’s prediction that Collin County would have run up a bigger legal tab to stiff Goeller as part of the county’s plan to de-fund the Special Prosecutors was far from a long-shot: it was a lock. But Self’s Doomsday scenario was averted when, within days, the commissioners recognized what every fair-minded resident of Collin County already knew: they’d made a huge mistake making Goeller their test case to defund the Special Prosecutors.⁷²

70. *Id.* (emphasis added).

71. *Id.*

72. Judge Self claimed that their change of heart had nothing to do with the “slew of angry emails from [the public] and friends and supporters of Goeller” but was instead the result of their belief that “the case Goeller was defending didn’t suit their purposes” of defunding the Special Prosecutors. McGaughey, “Collin County abandons plan to stiff public defender caught in crossfire of Ken Paxton

*10. The WBAP-AM Radio Spots Attacking
Byron Cook, Joel Hochberg, and the Special Prosecutors*

Watchdog.org is another adjunct of Team Paxton on the world-wide web, a 501(c)(3) nonprofit⁷³ with close ties to Tim Dunn, a Midland oilman, a noted Paxton supporter who guaranteed a million-dollar loan for him in the darkest days of his 2014 runoff election against Dan Branch for Attorney General.⁷⁴ Dunn's Empower Texans PAC also gave Paxton a \$100,000 campaign contribution.⁷⁵

During the week of November 1, 2016, Watchdog.org sponsored a radio ad that aired on WPAB-AM, the highest-rated radio station in the Dallas-Fort Worth Metroplex, attacking Byron Cook and Joel Hochberg,

prosecution.” www.dallasnews.com, November 28, 2016. Self's claim that “Goeller's background and personal circumstances did not factor into their decision [to reverse course],” was, however, seemingly belied by an email Commissioner Chris Hill sent to County Administrator Bill Bilyeu with the note, “We really are first class idiots.” *Id.*

73. While it claims to be an organization dedicated to “disrupt the prevailing political narrative ... and challenge partisans of all political stripes,” www.watchdog.org/about/, even a casual search of its website's search engine with “Paxton” keyed in readily reveals a treasure trove of stories that have two major plot points in common. First, they are all penned by Jon Cassidy; second, they are all designed to spread The Word to the faithful that Paxton is the victim of a political hit job orchestrated by the Special Prosecutors, three criminal defense lawyers from Houston appointed and paid in a *sub silentio* sweetheart deal, aided and abetted by Paxton's political foes, primarily State Representative Byron Cook and Speaker of the House, Joe Strauss.

74. Jeffers, “Conservative group gets Ken Paxton's campaign \$1 million loan,” www.dallasnews.com, May 20, 2014.

75. *Id.*

the two victims in this case, as well as the Special Prosecutors. WBAP, which bills itself as the most powerful radio station in Texas, broadcasts as a Class A clear-channel non-directional station with 50,000 watts enabling it to be heard not only in the Dallas-Fort Worth Metroplex, but throughout north and central Texas, as far away as Austin and College Station.⁷⁶ During the ratings period ending in November of 2016, WBAP's signal reached a total of 5,794,200 potential listeners.⁷⁷

The script of this first ad that aired on WBAP reads as follows:

I'm Chris Marrou⁷⁸ with a paid message from Watchdog.org.

Should Collin County taxpayers be obliged to spend millions of dollars prosecuting Attorney General Ken Paxton? The county's answer changed from "yes" to "maybe" when commissioners unanimously approved a resolution threatening legal action over a bill expected to be in the millions.

Last month, a federal judge dismissed a fraud case against Paxton after the Securities and Exchange Commission was unable to identify any law he had broken. The state case is even more vague. *Prosecutors haven't come up with a single lie or half-truth Paxton is supposed to have told. But they're*

76. [www.wikipedia.org/wiki/WBAP_\(AM\)](http://www.wikipedia.org/wiki/WBAP_(AM)).

77. www.ratings.radio-online.com.

78. Marrou was an news anchor at KENS-TV, the CBS affiliate in San Antonio. Marrou "was easily San Antonio's biggest anchor star – you might even call him legendary. He presided over KENS' news for 36 years and was known for high ratings..." Jeanne Jakle, "Where are they now? Catching up with S.A.'s ex-news stars," www.mysanantonio.com., January 29, 2014.

still pressing to convict him of defrauding investors.

Since Paxton's win in the federal case, the burden is on prosecutors to prove they have something the SEC didn't. *Otherwise, they're just collecting thousands for a job that doesn't need doing, one that has cost taxpayers over \$300,000 so far.* For more about the case, visit us at watchdog.org.

This message is paid for by Watchdog.org.

(emphasis added).

Watchdog.org then followed up this attack ad with a sequel that ran during the week of December 5, 2016, that reads as follows:

I'm Chris Marrou with a paid message from Watchdog.org.

Byron Cook, a powerful member of the Texas House, is being sued by a former associate who is accusing a Cook company of ripping him off for nearly a quarter of a million dollars. *Cook and his partner are accused of securities fraud.* Ironically, they were the source of a similar charge against Attorney General, Ken Paxton.

The cases couldn't be more different. The Cook case, if the allegations are true, is simple. According to the plaintiff, Cook's company charged the plaintiff an extra quarter of a million for oil property it lined up, pocketing the difference, *which the suit describes as "brazen securities fraud, deception, and outright theft."* *Is Byron Cook a sharp dealer* or is there some other explanation? To find out, go to watchdog.org.

This message is paid for by Watchdog.org.

(emphasis added).

It does not take an expert in the fields of broadcast communications or jury selection to see that these attack ads are designed to serve but one purpose: to taint the potential jury pool in this proceeding, not only in Collin County, but throughout North and Central Texas as well. That the content of these attack ads violates the spirit and tenor of Rule 3.07, is at once clear; that a link, whether direct or indirect exists between Team Paxton and Watchdog.org, the purveyors of these attack ads, is equally plain.

*11. Calco Land Development v. Unity Resources, et al.:
Team Paxton Finds Another Avenue to Smear Cook and Hochberg*

On November 4, 2016, Calco Land Development, L.L.C., filed a civil suit against Unity Resources, L.L.C., Mark Mersman, Mark Solomon, Jr., Trade Rare, L.L.C., Byron Cook and Joel Hochberg in the 417th District Court of Collin County, Texas.⁷⁹ In the words of watchdog.org. and Team Paxton tub-thumper Jon Cassidy, Cook “is being sued by a former business associate who is accusing a Cook company of ripping him off for nearly a quarter-million dollars.”⁸⁰ In his guise as a legal analyst, Cassidy

79. *Calco Land Development, L.L.C. v. Unity Resources, L.L.C., et al.*, cause no. 417-04885-2016.

80. Cassidy, Texas Rep. Byron Cook sued over fraud claim,” www.watchdog.org, November 21, 2016.

opined that the lawsuit accuses Cook of “securities fraud ... ironically, the same accusation that Cook made against [Paxton] ... however, unlike the particular case against Paxton, which relies on a novel interpretation of ‘fraud’ that doesn’t involve actual dishonesty, Cook is being accused of a swindle.”⁸¹

Try as he might to paint Cook, and by extension, Hochberg, as latter-day versions of Bernie Madoff in the minds of the Collin County jury pool on the strength of his untested and unwarranted allegations, Cook and Hochberg’s lawyers have distilled this lawsuit to what it is really about:

[T]his lawsuit has very little to do with the facts of this case, and *everything to do with an effort to smear and tarnish the good name of Byron Cook and Joel Hochberg*. Why is that? Because Cook and Hochberg are key witnesses in the upcoming criminal trial against Attorney General Ken Paxton ... in Collin County. Due to the close ties of the principal of Plaintiff in this case, Charles (“Chip”) A. Loper ... to Paxton, *it would appear this case is nothing more than a vehicle to smear Cook and Hochberg; to taint the Collin County jury pool for the upcoming trial of Paxton for securities fraud ...* , and an attempt to get discovery from witnesses for which Paxton cannot compel discovery in the criminal case.⁸²

81. *Id.*

82. *Calco Land Development, L.L.C. v. Unity Resources, L.L.C., et al*, ANSWER 1-2 (emphasis added)(footnotes omitted); *see also* Patrick Svitek, www.texastribune.org, “In SEC case, Paxton lawyers zero in on Byron Cook,” December 14, 2016.

To those, including but not limited to Team Paxton, who might think that the filing of this lawsuit is coincidence, kismet, or happenstance, and there is no connection, nexus, or link between Paxton and the Plaintiff, Calco Land Development, L.L.C., and its principal, Charles (“Chip”) A. Loper, think again:

- Loper is the trustee for Paxton’s blind trust that was established to hold Paxton’s assets and investments when he took office.⁸³
- Loper donated \$20,000 to Paxton’s legal defense fund.⁸⁴
- Paxton sponsored and promoted Unity Resources and the individual defendants and introduced them to Cook.⁸⁵
- It was Paxton (along with another individual) who made the initial introduction between Loper and Unity.⁸⁶
- Paxton was a member in, and manager for, Unity at the time of the transaction at issue, provided legal services to Unity, and did not resign as a manager of Unity until August 22, 2014.⁸⁷

83. *Id.* at 2 (citation omitted).

84. *Id.* (citation omitted).

85. *Id.*

86. *Id.*

87. *Id.* 2-3. Accordingly, the defendants have moved to have Paxton “designated as a responsible third party” under Chapter 33 of the Texas Civil Practice and Remedies Code. *Calco Land Development, L.L.C. v. Unity Resources, L.L.C., et al*, DEFENDANTS’ MOTION TO DESIGNATE RESPONSIBLE THIRD PARTY, 1-5.

- The law firm that filed the lawsuit against Cook and Hochberg, Scheef & Stone, is also co-counsel for Paxton in the pending SEC action pending against him in federal court in the Eastern District of Texas.⁸⁸
- Calco is suing a company and attempting to collect damages from it while its principal, Loper, serves as trustee for Paxton's trust that holds a membership in that same company; *Loper, as the trustee, is attempting to cause harm to the beneficiaries of the very trust he manages.*⁸⁹

In other words, as aptly phrased by Cook and Hochberg's counsel, "The ties between Plaintiff's principal [Loper] and Paxton are both wide and deep."⁹⁰ But the anti-Cook and Hochberg wing of Team Paxton was not done with its open and obvious ruse of trashing the victims of Paxton's alleged securities fraud. Far from it.

12. Enter the Dragon: Team Paxton Investigator Wayne Dolcefino Violates this Court's Order by Leaking Confidential Texas Ranger Work Product to a Team Paxton Propagandist

As part of its ongoing ethical duty under TEX. CODE CRIM. PROC. Art. 39.14(a), the Michael Morton Act, the State was obligated to turn over to Paxton's defense team in pre-trial discovery, certain documents, evidence,

88. *Id.* at 3.

89. *Id.* (emphasis added).

90. *Id.*

and witness statements, including two audio-taped interviews conducted by Texas Ranger Stacy McNeal, with, among others, Byron Cook and Joel Hochberg. Art. 39.14(e) provides that:

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.

(emphasis added). Although these prosecutions pre-date the advent of the Michael Morton Act, this Court ordered the parties, and the parties have agreed, to conduct discovery under the Michael Morton Act.

On December 20, 2016, Jon Cassidy, a blogger for the Texas Bureau of Watchdog.org, and one of Team Paxton's most vocal and reliable flacks, posted an entry titled, "TEXAS RANGER FILES: PAXTON CASE BASED ON AN ASSUMPTION." His post repeatedly quoted from "investigatory records of the Texas Rangers" and "the Rangers' reports" "obtained by Watchdog.org." of audio-taped interviews with Cook and Hochberg, and

referred to Ranger McNeal by name. Cassidy stated in his blog post that:

- “The Rangers interviewed three other investors that Paxton introduced to Servergy, and two other potential investors who decided not to put up any money...”
- Based on Ranger McNeal’s report, “It becomes clear why the SEC⁹¹ doesn’t have any other witnesses it can turn to.”
- Ranger McNeal’s reports cast doubt on the legitimacy of the SEC’s investigation and pending action against Paxton, because Ranger McNeal’s reports “are casting doubt on the new story” put forth by the SEC.
- “What [Cook and Hochberg] told the Rangers ... contradicts the SEC’s new line of attack.”

Predictably, Cassidy also made sure to continue his penchant for trashing the Special Prosecutors, asserting in his blog post that:

- “In July [2015], two well-paid special prosecutors and a judge⁹² who later recused himself got Paxton indicted⁹³ on state criminal

91. The Securities and Exchange Commission filed securities fraud civil charges against Paxton on April 11, 2016 for allegedly recruiting investors for Servergy while hiding the fact that he was being compensated to promote the company’s stock. While a federal judge overseeing the case dismissed the SEC’s complaint without prejudice on October 10, 2016, the SEC refiled an amended complaint against Paxton on October 21, 2016. That amended suit remains pending.

92. The Honorable Chris Oldner, former judge of the 416th Judicial District Court of Collin County, Texas. While Paxton loudly contended that Judge Oldner’s alleged misconduct in assembling and empanelling the grand jury that indicted Paxton vitiated the legitimacy of the latter’s trio of indictments, the *en banc* Dallas Court of Appeals did not linger long in rejecting his complaint. *Ex parte Paxton*, 493 S.W.3d at 297-301.

93. Cassidy’s unsupported and unsupportable allegation betrays a stunning lack of knowledge about the criminal justice system that anyone who squeaked through high school civics class would readily recognize: trial judges and prosecutors do not indict defendants; grand jurors do. *See* TEX. CODE.

charges.”

- “Still, even with Cook and Hochberg, those special prosecutors are going to have to earn the \$1 million-plus they’re making...”⁹⁴

That day, the Special Prosecutors immediately sought to determine who was responsible for leaking this highly sensitive, restricted, and confidential material to Cassidy. The next day, one of Paxton’s lawyers contacted the Special Prosecutors and admitted Cassidy was given Ranger McNeal’s reports and interviews by Dolcefino,⁹⁵ an investigator Paxton hired. Dolcefino’s conduct in leaking Ranger McNeal’s sensitive, restricted, and confidential interviews and reports to Cassidy violated this Court’s standing order and agreement of the parties that the discovery in these matters would be conducted under the Michael Morton Act, as well as Art. 39.14(e) of the Code of Criminal Procedure. Moreover, his conduct also flew in the face of a legion of Attorney General Opinions authored by

CRIM. PROC. arts. 20.19 & 20.21.

94. Cassidy has also accused the Special Prosecutors of “hoping for a \$2 million payday.” “Court may be bending rules for Paxton prosecutors,” www.watchdog.org, September 25, 2015.

95. In reality, Dolcefino’s forte is not so much investigation as it is opposition research, the art of which, as he proudly refers to it on his website, of “digging up dirt.” Dolcefino boasts on his web site that he “knows how to dig ... and what to dig for. Wouldn’t you want him on you side?” www.dolcefino.com.

Paxton's office⁹⁶ that offense reports and related work product of law enforcement in a pending criminal investigation or criminal prosecution are confidential and privileged and not subject to disclosure under TEX. GOV'T. CODE §552.108(a)(1),⁹⁷ the Texas Public Information Act.

Dolcefino's conduct in leaking Ranger McNeal's highly sensitive, restricted, and confidential material to Cassidy could not have been more clear. As Dolcefino himself boasts on his web site:

- "The opposition must understand the power of your client's argument and what that will look like if your case goes to a jury."
- "Opposition Research is just part of the menu at Dolcefino Consulting. ... An aggressive media strategy is vital to a campaign."

Dolcefino knew full well that Cassidy was a Team Paxton partisan, patron and most of all, propagandist who could be counted on to inflict the latest insult and injury in Team Paxton's ongoing gambit of inflicting death by a thousand cuts to the character and reputation of Cook,

96. *See e.g.*, Attorney General Opinion No. 577523. This opinion, dated July 6, 2015, was in response to the request of Tarrant County Assistant District Attorney Ashley Fourt, who sought Paxton's office's opinion on whether her office was obligated to release an autopsy report in a pending criminal matter. Paxton concluded that this material could be withheld from public disclosure pursuant to §552.108(a)(1). Paxton's office issues such boilerplate rulings on a weekly basis.

97. "Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of [this section] if: release of the information would interfere with the detection, investigation, or prosecution of crime..."

Hochberg, the Special Prosecutors, and the Rangers.⁹⁸ That Dolcefino would knowingly engage in manifestly bad-faith conduct⁹⁹ contempt of court by violating an order of this Court¹⁰⁰ and aiding and abetting Cassidy in demeaning and defaming the character, reputation and credibility of the victims in this case is not merely contumacious,¹⁰¹ it is unconscionable. And, tellingly, as part of Team Paxton's mission to irreparably taint the pool of prospective Collin County jurors in advance of trial, Team Paxton financial angel Tim Dunn did not hesitate to link Cassidy's blog post to his Facebook page on December 21, 2016. Dunn also

98. That Cassidy's anti-Cook, anti-Hochberg, anti-Rangers, and anti-Special Prosecutors screed has been publicly disseminated in social media and beyond is perhaps best fortified by a Facebook post from trusted Team Paxton lieutenant Michelle Smith. *See* n. 61, *supra*. In a December 20, 2016, Facebook post, Smith trumpeted Cassidy's blog post constructed on the Dolcefino's contumacious conduct to her almost 1,900 followers and untold others as a "BREAKING NEWS ALERT! ... the news scoop of the year ... [a] blockbuster news story [that] points the finger at State Rep. Byron Cook as the culprit for the political persecution of [Paxton]. ... More chickens coming home to roost." Smith invites her followers – who are only too happy to do so – to "share" this story with all of their Facebook friends and Team Paxton faithful.

99. "Bad faith" is defined in Texas as a "conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose." *Stites v. Gillum*, 872 S.W.2d 786, 795 (Tex.App.– Fort Worth 1994, writ den'd). Simply put, Dolcefino's misconduct falls squarely within this definition.

100. *In re Escareno*, 297 S.W.3d 288, 292 (Tex.Crim.App. 2009)("The power to punish for contempt of court when a party fails or refuses to obey a prior court order or decree is 'an inherent power of a court and is an essential element of judicial independence and authority.'").

101. *Ex parte Norton*, 191 S.W.2d 713, 714 (Tex. 1946)("Generally speaking, he whose conduct tends to bring the authority and administration of the law into disrespect or disregard, interferes with or prejudices parties or their witnesses during litigation, or otherwise tends to impede, embarrass, or obstruct the court in discharge of its duties is guilty of contempt.").

directed the faithful to read an article by Empower Texans flack and Team Paxton publicist Tony McDonald. McDonald rails that, “Taxpayers [*i.e.*, potential jurors] in Collin County should be demanding that their leaders end the **corrupt travesty of the criminal justice system** that is the Paxton criminal prosecution.”¹⁰² (emphasis in original).

13. Blackard’s War Against the Special Prosecutors: the Sequel

Less than 48 hours after the dismissal of his initial lawsuit against the Special Prosecutors on “behalf of the taxpayers of Collin County” was affirmed by a unanimous panel of the Fifth Court of Appeals, Blackard was back at it. Although Blackard’s transparent and unavailing attempt to turn the potential jury pool against the Special Prosecutors had already cost Collin County some \$106,000 in attorneys fees and court costs,¹⁰³ he filed another petition and application for a temporary restraining order (“TRO”), rehashing all of the patently frivolous allegations set out in his

102. In linking the faithful to McDonald’s rant, Dunn uses the Paxton prosecution as an example of, “If a DA hates you and lies to a grand jury to get you indicted, there is no legal remedy in judicial [sic] appeal.”

103. McGaughey, “Ken Paxton donor sues Collin County over prosecution’s price tag ...again,” Dallas Morning News, January 20, 2017.

initial lawsuit.¹⁰⁴ Even a cursory review of this document reveals that the allegations it recycles against the Special Prosecutors and this Court, achieve no additional cachet from their mere rote repetition. To no one's surprise, this repackaging of the original script into a hollow excuse for a sequel was not lost on Judge Greenberg; on January 27, 2017, one week after this tired tome was filed, Judge Greenberg denied Blackard's request for a TRO.¹⁰⁵

14. Team Paxton's More Recent Personal Attacks on Byron Cook

With jury selection in these matters fast approaching, Empower Texans and Team Paxton propagandist, Tony McDonald, has stepped up his personal attacks against Byron Cook on social media. In a recent blog post on the Empower Texans web site, McDonald accused Cook of hiring a fellow state legislator, Rep. Rene Oliveira of Brownsville, to "purchase [Oliveira's] legislative privilege so it can be used to shield Hochberg and

103. *Jeffory Blackard v. Attorney Pro Tem Kent A. Schaffer, in his official capacity, Attorney Pro Tem Brian W. Wice, in his official capacity, Attorney Pro Tem Nicole DeBorde, in her official capacity, et al*, 380th District Court, trial court no. 380-00320-2017 "PLAINTIFF'S VERIFIED FIRST AMENDED ORIGINAL PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER," at 1. See n. 4, *supra*.

104. On January 30, 2017, the Fifth Court of Appeals issued a stay in the proceedings, temporarily precluding Collin County Commissioners Court from authorizing payment on the second round of bills submitted by the Special Prosecutors. *In re Jeffory Blackard*, No. 05-17-00093-CV.

others from having to give testimony that could be beneficial to Paxton in the criminal prosecution and SEC cases.” www.empowertexans.com, “Cook teams with Democrat to avoid testimony in Paxton matter,” January 20, 2017. This *ad hominem* screed effectively accuses Cook of committing the second-degree felony of bribery. *See* TEX. PENAL CODE, § 36.02(a)(1). Just days later, McDonald’s Empower Texans blog post asked if Cook “will be forced to plead the Fifth in order to **protect himself in his own trial?**” “Will Cook plead the Fifth?” www.empowertexans.com, January 24, 2017. (all emphasis in original). He accused Cook of “**walking [his] allegations back, apparently out of fear that Cook will snare [sic] himself with his own lies.**” *Id.*

15. The Prelude to Collin County Commissioners Court Convening

As soon as the ink was dry on the January 30, 2017 agenda of Collin County Commissioners Court at which the payment of the second round of invoices submitted by the Special Prosecutors was to be voted upon, Team Paxton’s social media apparatus was working overtime. On January 27, 2017, Team Paxton soldier, Brian Newman, extended a Facebook invitation to almost 100 of his Facebook friends urging them to JOIN US:

The moment we have been waiting for has arrived. We have

the legal right to challenge this illegal bill. Encourage our elected Commissioners to [sic] Refuse this massive payment for an immoral prosecution of a great man, Texas Attorney General Ken Paxton.

A judge from Fort Worth has, regrettably, authorized fees for the prosecuting attorneys that would bankrupt a smaller county. How do we fund prosecutions? NOT THIS WAY. Commissioners, let's get the legal analysis from that [Fort Worth] Judge. DON'T PAY THE BILL.

See you Monday at the Commissioners Court. 1:30 p.m.

Appended to Newman's call to arms was an invitation instructing Paxton's minions to come to Commissioners Court on January 30, 2017, to "DEFEND KEN PAXTON & STOP BYRON COOK." Newman's entreaty was joined by Team Paxton cheerleader Michelle Smith, who took the time to once again trash Byron Cook. "Based on Byron Cook's lies," she railed, "Collin County tax payers are having to pay what could be in the millions for his witch hunt against General Paxton."¹⁰⁶ Newman followed up with a Facebook post on January 30, urging all "Collin and Tarrant County Resident's [sic]" to come to Commissioners Court and "fill up this room." Not surprisingly, Team Paxton answered the call.

106. Smith prayed that "each person tagged on this post will share this..."

16. Team Paxton Fills the House at Commissioners Court

As seen on the videotape of the January 30 meeting of Collin County Commissioners Court,¹⁰⁷ the room full of potential Collin County jurors burst into applause when County Judge Keith Self noted that the Dallas Court of Appeals had granted a temporary stay.¹⁰⁸ While those present no longer had to fear that Commissioner Court would authorize payment of the Special Prosecutors' second round of invoices, that did not keep a dozen or more of them from demanding that this round of bills not be paid. A cavalcade of potential jurors approached the podium and, in the three minutes afforded to them, told Commissioners Court:

- Private investigators had found that this political witchhunt against General Paxton, budgeted for over \$2,000,000 by Judge Becker and run by celebrity attorneys from Houston, had exposed Judge Oldner and his wife. (Jeff Blackard).
- This out of control attempt by the Special Prosecutors to “dethrone General Paxton” was being led by defense attorneys with a political agenda and who were on a scale with the lawyers who represented O.J. Simpson.¹⁰⁹ (Linda Blackard).

107. This video is available at www.collincountytx.gov (Commissioners Court Videos).

108. As Team Paxton member Suzanne Blackstone trumpeted on her Facebook page on January 30, 2017, “The citizens packed the courtroom today! When Judge Self read the Court’s order of a ‘stay’ for payment, the audience erupted with applause!”

109. In galaxy far, far away, this might have passed as a compliment. Given the tenor and context of Ms. Blackard’s rejoinder, nothing could be further from the truth.

- Jesus Christ would not want to see a man like General Paxton, who had done no harm and no wrong, prosecuted and would certainly not want to see the Special Prosecutors get paid. (J.D. Lee).
- Because this witch hunt and the Special Prosecutors' request to be paid was reminiscent of King Solomon and the two harlots and stunk to high heaven, Commissioners Court needed to draw their swords against the Special Prosecutors, one of whom also stunk to high heaven and whose boldness was offensive. (Brian Newman).
- Those individuals objecting to this Court's order to pay the Special Prosecutors, conduct evincing its willingness to spend Collin County money, should be able to vote him out of office but cannot "because we can't get to him" even though the citizens of Tarrant County who elected this Court "don't give a rip about what he spends of our [sic] money." (Mike Giles).
- The Commissioners were obligated to go to jail before agreeing to pay the invoices submitted by the Special Prosecutors because "our way of life" was "under attack in Collin County." (Ms. Richardson).

In the face of this temporary stay, Team Paxton could not help but take a victory lap and doing what they do best: piling on. In a February 1, 2017 Facebook post, Team Paxton's Michelle Smith linked a blog post written by Empower Texans publicist Tony McDonald about Kent Schaffer,¹¹⁰ sharing it with almost one hundred of her Facebook friends.¹¹¹

110. "Paxton Prosecutor Disqualified from Motorcycle Gang Case." Predictably, Smith vilifies and demonizes Schaffer for defending the Bandidos – "This is the kind of man Judge Scott Becker picked to use Collin County tax money to go after a [sic] innocent man and his beautiful family." Equally predictable is her penchant for relying on alternative facts. While Schaffer was disqualified, it was not, as Smith avowed, because he was "an unindicted coconspirator in the Bandidos organization." As the Magistrate Judge found, because two of his former clients were cooperating

While taking aim at Schaffer, she also delivered another rabbit punch at Byron Cook, ranting that, “These political witch hunts MUST STOP!!! Bryon [sic] Cook needs to be exposed for what he has done. Prayers appreciated for full exposure of ALL the wrong involved in this.” (emphasis in original).

*17. Longstanding Team Paxton Disciple Rick Santorum
Trashes Byron Cook, Kent Schaffer, and this Court*

The most recent, indeed, most egregious attempt by Team Paxton to taint the pool of prospective jurors was staged by Rick Santorum, one of its veteran members, former U.S. Senator and presidential candidate, and confidant of Paxton and Blackard.¹¹² In a February 4, 2017 interview with

with prosecutors, “the continued representation by Mr. Schaffer ... presents either an actual conflict of interest, or a serious potential conflict of interest.” Contreras, “Feds take out Bandidos lawyers,” www.chron.com, February 1, 2017. This Court knows what Smith does not – that a lawyer has been disqualified because of a conflict of interest does not mean that he or she has acted unethically.

111. This list included Paxton, his wife, several of the County Commissioners, and several of the state legislators who conspired via text to “helping Ken” even while they “dared” this Court to “hold Collin County in contempt” for disobeying its lawful order, and doing what they could to defund the Special Prosecutors. *See* pp. 24-26, *supra*. Clearly, the exponential effect of Smith’s post and the number of her Facebook friends who shared it with their friends and so on is incalculable.

112. www.youtube.com, “Rick Santorum Joins Team Paxton!” August 19, 2013. A close friend of Paxton who attended his investiture as a state senator, Santorum has long vented in the media that this is “another political prosecution.” Jeffers, “GOP presidential contender Rick Santorum says indictment against Texas AG Ken Paxton politically motivated.” www.dallasnews.com, October 12, 2015. Santorum is also good friends with Jeffery Blackard, as a review of the latter’s Facebook page reveals. *See also* Jones, “I was half wrong about Rick Santorum,” www.dallasnews.com, February 10, 2012 (“Impressed, Blackard decided to bring Santorum to the Dallas area and open

reporter J.D. Miles broadcast on KTVT-TV, the CBS affiliate in the Dallas-Fort Worth area, Santorum achieved a rare triple double, trashing Messrs. Schaffer and Cook, and this Court. Santorum described this case as “the worst [example]” of “a pure political vendetta,” a “miscarriage of justice,” and a “witchhunt being funded by [Collin County] taxpayers” and called for the prosecution against Paxton to be dropped.”¹¹³ And that was just for openers.

Prefacing his screed with his ironic disclaimer that “you can’t make this stuff up,” Santorum nevertheless went on to “make ... stuff up” by:

- accusing Cook of being a member of the “cabal” that has handed over control of the Texas Legislature to Democrats and other members of the Republican Party.¹¹⁴
- repeatedly labeling Cook as someone who has been sued for fraud and has “changed his story” about Paxton.¹¹⁵
- accusing this Court of not merely “breaking the law” but “raping the taxpayers [of Collin County]” by enforcing its lawful orders to fund

doors for him here.”). In an October 16, 2012 e-mail the State will produce, Paxton aide Ben Williams invited Bill Mapp, former Servergy honcho, to a Paxton fundraiser featuring Santorum.

113. J.D. Miles, reporter for Dallas CBS affiliate KTVT, quoting Rick Santorum, “Former U.S. Senator Calls For Case Against Texas AG To Be Dropped,” www.dfw.cbslocal.com, February 4, 2017.

114. *Id.*

115. *Id.*

the Special Prosecutors.¹¹⁶

- accusing Schaffer of being “an unindicted co-conspirator of a drug gang.”¹¹⁷

These latest public and unmistakable pronouncements, not merely by a representative cross-sample of Collin County potential jurors taking time out of their day to speak out at Commissioners Court against paying the Special Prosecutors, but by Team Paxton’s Facebook army, is the latest chapter in their almost two-year long public relations blitz to taint the Collin County jury pool by poisoning it against the State, its victims, and even this Court.¹¹⁸ This coordinated, sustained, and knowingly false narrative put forth by Team Paxton persists to this very day, and, as set

116. *Id.*

117. *Id.* As set out above, the only reason Santorum, or any other member of Team Paxton, would continue to make this baseless allegation, one that was *not* sustained by the federal magistrate judge, is to assassinate Mr. Schaffer’s character and to paint him, albeit without foundation, as the ultimate unethical and unscrupulous criminal lawyer and all-around bad guy in the hearts and minds of Collin County jurors.

118. Team Paxton’s ongoing efforts at defaming and deprecating this Court to taint the jury pool is itself a compelling basis for changing venue on this Court’s own motion. It is precisely because “under any system of jury trials the influence of the trial judge on the jury is necessarily and properly of great weight...,” *Starr v. United States*, 153 U.S. 614, 626 (1894), that potential jurors will be open, honest, and forthcoming with the Court – whom they view as the ultimate unbiased authority figure – about their ability to be fair and impartial in this case. But Team Paxton’s ploy in painting this Court as a “law-breaking” figure “raping the taxpayers” and enforcing its “unlawful orders” with the “judicial tyranny” of threatening to lock up the members of Commissioners Court has reduced it to just another cast member in this “miscarriage of justice,” irreparably damaging this Court’s ability to preside over jury selection, certainly in Collin County, and probably the Dallas Metroplex.

out below, compels this Court, as a matter of law, to order a change venue from Collin County.

III. ARGUMENT AND AUTHORITIES

1. *The Standard of Review Governing Changes of Venue*

This Court's ruling changing venue on the State's motion or its own motion cannot be reversed unless it is an abuse of discretion. *Brimage v. State*, 918 S.W.2d 466, 508 (Tex.Crim.App. 1994)(op. on rehr'g). A ruling is not an abuse of discretion so long as it is not arbitrary or unreasonable, *State v. Mechler*, 153 S.W.3d 435, 439 (Tex.Crim.App. 2005), or "so clearly wrong as to lie outside the zone within which reasonable persons might disagree." *McDonald v. State*, 911 S.W.2d 798, 800 (Tex.App.— San Antonio 1995, pet. dism'd). This Court does not abuse its discretion just because an appellate court would have decided this issue differently. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241 (Tex. 1985)("The mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar circumstance does not demonstrate that an abuse of discretion has occurred."). This Court's ruling changing venue on motion of the State or on its own motion will be upheld if correct on any theory of law

applicable to the case. *Parks v. State*, 330 S.W.3d 675, 679 (Tex.App.—San Antonio 2010, pet ref'd). Viewed through this deferential lens, controlling authority buttresses the conclusion that this Court's ruling changing venue, either on the State's motion or on its own motion, is virtually unassailable on appeal.

2. Art. 31.02: Changing Venue on the State's Motion

While there is a dearth of authority interpreting art. 31.02,¹¹⁹ common sense and political reality suggest why. In a typical criminal prosecution, the elected District Attorney or County Attorney would instinctively and understandably be reticent about filing a motion to change venue because such a request is necessarily grounded in the notion that the very people who elected him or her could not be trusted to give the prosecution a fair shot. Of course, that dynamic is hardly in play in the case at bar; indeed, just the opposite is true. The defendant is an exceedingly popular local hero, with an electoral record of 15-0 and almost 600,000 votes garnered in the process; the Special Prosecutors, as noted above, have been repeatedly and convincingly portrayed as partisan hit-

119. *See* n. 1, *supra*.

men from Houston who are literally at war with the taxpayers of Collin County, who have not elected them to any post, office, or position.

But one of the few cases interpreting art. 31.02, *Garza v. State*, 974 S.W.2d 251 (Tex.App.– San Antonio 1998, pet. ref'd), is perhaps the most instructive. In *Garza*, the trial court granted the State's motion to change venue without notice or a hearing and where the State adduced no proof in support of its motion. The court of appeals affirmed, holding that the defendant *has no state or federal constitutional right to be tried in his home county*, and, moreover, has no tactical interest in being tried in his home county simply because he would preferred to be tried there. *Id.* at 259-260 (emphasis added). On the record before this Court, the holding in *Garza* buttresses the conclusions that the State is entitled to a change of venue, and that such a ruling would not be disturbed on appeal.

3. Art. 31.01: Changing Venue on the Court's Own Motion

TEX. CODE CRIM. PROC. Art. 31.01¹²⁰ provides that the Court, on its own motion, and after notice and a hearing, may order venue changed to any county beyond an adjoining district if it is satisfied that a fair and

120. See n. 2, *supra*.

impartial trial cannot be had from any cause in the county in which the case is pending. The body of case law affording this Court with the inherent discretion to change venue on its own motion makes its task in doing so clear, and the conclusion that its ruling would not be disturbed on appeal equally plain.

At the outset, while it is generally considered an article of faith in the criminal justice system that this Court is not free to change venue on its own motion unless and until it has attempted, albeit unsuccessfully, to select a jury in Collin County, the Court of Criminal Appeals squarely rejected this urban and legal legend in *Allen v. State*, 488 S.W.2d 460, 461 (Tex.Crim.App. 1972)(rejecting defendant's argument that trial court was first required to make an attempt to select a jury before it could change venue on its own motion). Indeed, the Court of Criminal Appeals has repeatedly stated that, where the trial court changes venue on his own motion "from any cause," "[i]t is difficult to envisage a state of facts by which [an appellate court] would be warranted in finding that an abuse of discretion has occurred." *Spriggs v. State*, 289 S.W.2d 272, 273 (Tex.Crim.App. 1956); *Cook v. State*, 667 S.W.2d 520, 523 (Tex.Crim.App. 1984)(quoting *Spriggs* with approval); *Brimage v. State*, 918 S.W.2d 466,

508 (Tex.Crim.App. 1994)(op. on rehr'g)(quoting *Spriggs* with approval). Finally, the Court of Criminal Appeals has long held that Art. 31.01 vests this Court with virtually unlimited judicial discretion to change venue on its own motion, provided it complies with this article. *See e.g., Spriggs v. State*, 289 S.W.2d at 273 (upholding trial court's decision to change venue on its own motion "notwithstanding the strong showing by appellant that a fair trial could be had in the county where the prosecution was begun."); *Cook v. State*, 667 S.W.2d at 522-23 ("The court is authorized to change the venue of any case ... when he has satisfied himself that a trial, alike fair and impartial to the state or the accused, cannot be held in the county, *without reference as to how or from what facts and circumstances such conclusion was reached.*" (emphasis added); *Berwick v. State*, 194 S.W.2d 768, 770 (Tex.Crim.App. 1946)(same).

In *Aranda v. State*, 736 S.W.2d 702, 705 (Tex.Crim.App. 1987), the court rejected the claims that "a defendant should have the prerogative to make tactical decisions as to where he wants the case tried" and before a court could change venue *sua sponte*, "there should be overwhelming evidence that both the State and defendant will not receive a fair trial." In *Brimage v. State*, 918 S.W.2d at 508, the court held that Art. 31.01 does

not require this Court to offer evidence in support of its own motion but rather merely offers the parties a chance to be heard. So long as this Court states in its order the grounds for its decision, no abuse of discretion will be shown, and its decision will not be disturbed on appeal. *Id.*

4. Case Law from Foreign Jurisdictions Mirrors Texas Authority

In *State v. Paulsen*, 293 N.W.2d 244, 246 (Iowa 1980), the defendant was the Scott County Sheriff, who was charged with running a scheme that overcharged lawyers under a state law that compensated deputies for mileage they put on their personal vehicles. The State moved for a change of venue, which the trial court granted. The Iowa Supreme Court held the trial court did not abuse its discretion in granting the State's motion for change of venue because:

- Paulsen enjoyed an inherent home field advantage given his “local popularity as evidenced by his two-thirds majority vote victory in the previous sheriff’s election.”
- The trial court correctly reasoned “that the summoning of jurors essentially from voter registration lists would result in a high percentage of prospective voters sympathetic to [Paulsen], hence the likelihood of starting the State in a position ‘less than even’ with [Paulsen].”
- In the fourteen months the case was pending, there was “both a ‘deluge’ and an ‘incessant bombardment of pretrial media publicity’ which the trial court concluded “created excitement and prejudice”

in Scott County.”

Id. at 244-47. The reasoning and analysis in *Paulsen* applies with equal force here. Unlike *Paulsen*, whose popularity and home field advantage was reflected by having won a recent election by a super-majority, Paxton has won fifteen elections, almost all of the contested ones by a super-majority. While Paxton’s jurors, as in *Paulsen*, will not be summoned by voter registration lists, his popularity creates the self-same likelihood of starting the State in a position “less than even” with him as in *Paulsen*.

In *State v. Sproul*, 544 A.2d 743, 744-45 (Me. 1988), the defendant was a member of the Maine House of Representatives and was convicted of two counts of ballot tampering. The trial court changed venue from Kennebec County to Knox County on its own motion because of Sproul’s “position as an elected representative of the City of Augusta and the heavy pretrial publicity this matter has received.” *Id.* The Supreme Judicial Court of Maine held the trial court’s ruling was not an abuse of discretion because the trial court “reasonably assumed that [Sproul’s] status as a public official and heavy pretrial publicity would unnecessarily burden the jury selection process in Kennebec County.” *Id.* at 746. Because this Court can similarly presume that Paxton’s status as a public official and

heavy pretrial publicity will unnecessarily burden jury selection in Collin County, *Sproul* compels a change of venue in this case as well.

In *State v. Poole*, 489 N.W.2d 537, 540-41 (Minn. App. 1992), *aff'd*, 499 N.W.2d 31 (Minn. 1993), the defendant was charged with 17 counts of sexual assault in Traverse County, but the trial court changed venue on its own motion to Chippewa County. The court of appeals concluded the trial court did not abuse its discretion changing venue *sua sponte* because it correctly concluded that “news articles, letters to the editor and public criticism by the county attorney prevented a fair and impartial trial in Traverse County.” *Id.* at 542-43. If mere “news articles, letters to the editor and public criticism by the county attorney” constitute a sufficient basis for the trial court’s change of venue on its own motion in *Poole*, the record before this Court as recounted in exquisite detail above, one wholly without equal in the annals of Texas criminal justice, makes this Court’s task in changing venue as simple as it is clear.

Conclusion

In resolving this discrete issue, one unfettered by concerns like error preservation or the standard of review, this Court should remember the words of Justice Benjamin Cardozo in *Snyder v. Massachusetts*, 291 U.S.

97, 122 (1934), “But justice, though due the accused, is due the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.”

If the State of Texas, represented by the Special Prosecutors, is to obtain either justice or fairness for its victims on behalf of the 28-million people it has taken a solemn oath to represent, this Court is constrained to grant the State’s motion to change venue from Collin County, or in the alternative, to change venue from Collin County on its own motion. It comes as no surprise that Paxton will vociferously argue that the State and the victims of Paxton’s alleged criminality can get a fair trial in Collin County. At the end of the day, controlling case law and the underlying facts informing this Court’s decision clearly compel a contrary conclusion. But, in the words of Ernest Hemingway, “Isn’t it pretty to think so?”¹²¹

Prayer for Relief

The State of Texas prays that this Court grant its motion to change venue from Collin County, or in the alternative, to change venue from Collin County on its own motion.

121. THE SUN ALSO RISES, 247 (Macmillan Publ’g Co. 1987)(1926).

Respectfully submitted,

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**ATTORNEYS PRO TEM
THE STATE OF TEXAS**

CERTIFICATE OF SERVICE

Pursuant to Tex. R. App. P. 9.5(d), a copy of this motion was served upon all counsel and the Court by e-filing on February 9, 2017.

/s/ Brian W. Wice

BRIAN W. WICE