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March 6, 2015

██████████ Foreman
199th District Court Grand Jury

██████████ Vice Foreman
199th District Court Grand Jury

Re: Kenneth Warren Paxton, Jr.

██████████:

I write to request a grand jury investigation of Kenneth Warren Paxton, Jr., formerly of Collin County. By copy of this letter to District Attorney Greg Willis, and for the reasons set forth below, I request that Mr. Willis recuse his office from any investigation of Mr. Paxton, who now serves as the Attorney General of Texas.

You are probably familiar with recent press reports about the Travis County District Attorney's investigation to determine whether Mr. Paxton criminally violated the Texas Securities Act. On January 29, 2015, Travis County prosecutors announced that they had determined that venue was improper in Travis County, therefore the case would be referred to the district attorneys in Dallas County and Collin County.

Later that day, Dallas County District Attorney Susan Hawk announced that venue was not proper in Dallas County. That, of course, meant venue was only proper in Collin County. When contacted by the *Dallas Morning News*, Collin County First Assistant District Attorney Bill Dobiyski declined to say whether his office was investigating Mr. Paxton.

I subsequently spoke with Mr. Dobiyski myself and received the same answer. Under the circumstances of this case, that is not an acceptable response. While prosecutors commonly refuse to acknowledge an investigation when publicity might jeopardize the case, there is no danger of that here because Travis County publicly acknowledged the criminal investigation months ago, and most of the facts are already a matter of public record.

Furthermore, according to a report on the *Dallas Morning News* website, Mr. Willis "is a longtime friend of Paxton." That does not necessitate recusal by law, nor does it necessarily mean that Mr. Willis is trying to bury the case against his friend. Nonetheless, his prolonged silence creates the appearance that he wants to let the case die by keeping matters quiet until the limitations period lapses.

I strongly urge Mr. Willis to recuse his office from the case against Mr. Paxton and ask Judge Angela Tucker to appoint someone from the Travis County District Attorney's Office to serve as special prosecutor in Collin County. Since Travis County has already completed its investigation, there is no need to re-invent the wheel.

Regardless of whether Mr. Willis recuses his office, the grand jury can act independently to investigate Mr. Paxton. "In consideration of the importance of the place occupied by the grand jury in our system of government, Texas courts have long described the grand jury as a separate tribunal, independent of the control of judges and prosecutors, whose proceedings are secret, vested with broad inquisitorial powers." *Whittington v. State*, 680 S.W.2d 505, 512 (Tex.App. - Tyler 1984, *pet. denied*). Grand jurors are free to "act on their own knowledge and ... [are] free to make their presentments or indictments on such information as they deem satisfactory." *Costello v. U.S.*, 350 U.S. 359, 361 (1956), cited with approval in *Whittington*, 680 S.W.2d at 511.

In other words, the grand jury can investigate and indict Mr. Paxton regardless of what Mr. Willis does or does not do. And a grand jury in Collin County can certainly invite the Travis County District Attorney's Office to present the case that it otherwise would have (but for the lack of venue) presented to a Travis County grand jury.

The grand jury should be aware of the seriousness of the allegations against Mr. Paxton as well as the overwhelming evidence against him. He has been accused of violating Chapter 29 of the Texas Securities Act, which declares that violations are a third-degree felony. The relevant statute states as follows:

Any person who shall... [s]ell, offer for sale or delivery, solicit subscriptions or orders for, dispose of, invite offers for, or who shall deal in any other manner in any security or securities without being a registered dealer or agent as in this Act provided shall be deemed guilty of a felony of the third degree.

Vernon's Ann. Texas Civ. St. Art. 581-29(A). I have attached a copy of an agreed order dated May 2, 2014 between Mr. Paxton and Texas Securities Commissioner John Morgan, and frankly I am surprised that Mr. Paxton's lawyer let him sign it. In that order, Mr. Paxton stipulated that he "solicited three (3) clients for MCM at times when MCM was a state-registered investment advisor but [Paxton] was not registered as an investment advisor representative of MCM."

As I interpret Mr. Paxton's signature on the agreed order, he has stipulated that he violated Art. 581-29(A). In other words, it appears to me that he has already admitted that he committed a felony. If so, the agreed order is not only sufficient evidence for an indictment, but a criminal conviction.

Mr. Paxton's spokesmen have repeatedly claimed that his violation of the statute was an honest mistake, but that explanation does not hold water. While he was in the Texas House of Representatives in 2003, Mr. Paxton voted in favor of the statute that outlawed his conduct. In 2011, while he was a member of the Texas Senate, Mr. Paxton voted to amend that statute by clarifying that violations are a third-degree felony.

Worse, Mr. Paxton previously violated the same statute in 2004 and 2005, and in 2009 *he was sued for violating that statute*. Yet he violated it again in 2012, and now he claims that it was all just a good-faith mistake. This is not plausible.

I recently spoke with John Sloan, the attorney in Longview who sued Mr. Paxton in 2009, and he said he would be glad to meet with the grand jury if invited. According to Mr. Sloan, his clients previously were clients of Mr. Paxton, and Mr. Paxton referred them to his friend's investment company without telling them that he was getting a 30 percent kickback on investment management fees.

Mr. Paxton's spokesmen have repeatedly made issue of the fact that Mr. Sloan has previously donated to Democrats, but that should be irrelevant. I am a Republican, and I could not care less what parties Mr. Paxton and Mr. Sloan are affiliated with. The law is the law, and nobody should be above it, especially not the state's highest ranking law-enforcement official.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: Grand Jurors,
199th District Court Grand Jury
The Hon. Angela Tucker, Judge
199th District Court
The Hon. Greg Willis, Collin County District Attorney