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March 21, 2015

The Hon. Greg Willis, District Attorney  
Collin County Courthouse  
2100 Bloomdale Road, Suite 100  
McKinney, Texas 75071

Re: Kenneth Warren Paxton, Jr.

Mr. Willis:

In my March 6, 2015 letter to the 199<sup>th</sup> District Court grand jury, I asked that you recuse your office from any investigation of Attorney General Ken Paxton because of your personal friendship with Mr. Paxton. As I explained in that letter, you have created an appearance that your office is stonewalling any investigation of Mr. Paxton until the three-year limitations period expires on his alleged securities violations.

Since sending the letter, I have obtained additional information about your relationship with Mr. Paxton, and I now believe that you have a serious conflict of interest. According to records filed with the Texas Secretary of State, you and Mr. Paxton are business partners. As a result, any investigation of Mr. Paxton's shady business interests would likely result in an investigation of your own business interests.

In a May 1, 2014 Texas Franchise Tax Public Information Report, you and Mr. Paxton are listed among the 19 co-owners of Unity Resources, LLC in Plano. Your names do not appear on the tax reports prior to 2014, so it appears that you both became owners in 2013 or 2014. And according to a May 4, 2014 article in the *Dallas Morning News*, you and Mr. Paxton are also among the 11 partners in Eldorado-Collin, L.P. Citing campaign spokesmen for Mr. Paxton, the newspaper reported that you and your associates bought 35 acres in Collin County in 2004 for about \$700,000, then flipped a little less than half the property about eighteen months later for just over \$1 million. The property was later used as the site of the Collin County Appraisal District building.

The article raises serious questions about whether you, Mr. Paxton, and your associates were the beneficiaries of insider information. At the very least, it appears that you were trading on your political connections to make a fast buck. But I believe the *Morning News* vastly understated the problem.

Rather than rely on campaign spokesmen for the sales price of the property, I reviewed some of the actual transaction records. According to the special warranty deed on file in the county clerk's office and dated December 3, 2004, your partnership purchased the 35 acres with a \$115,000 promisory note from North Dallas Bank and

Trust, then sold 18 of those acres on June 30, 2006 for \$7,335,000. If that is so, the disparity between the purchase price and the sales price is many times greater than what the *Morning New* reported. Even if one ignores the remaining 17 acres that your partnership retained after the 2006 sale, the sales price still represented a profit of more than 6,000 percent in less than two years. If you factor in the 17 acres and assume that each of the 35 acres was originally worth the same amount, that's a profit of more than 13,000 percent in less than two years.

This raises some serious questions. Did you, Mr. Paxton, and/or your partners have inside information that the county appraisal district was hoping to locate its headquarters on the property? Did taxpayers have to pay millions more for the appraisal district site because of the actions of your partnership? What other elected officials in Collin County are part of the partnership? Do you and Mr. Paxton have other joint business interests besides Unity Resources and Eldorado-Collin?

For purposes of events in 2006, the limitations periods has expired on most potential charges, although the limitations period for engaging in organized criminal activity does not begin to run until the last act in furtherance of the criminal enterprise. See *Vincent v. State*, 945 S.W.2d 348, 350 (Tex.App.–Houston [1<sup>st</sup> Dist.] 1997, *pet. denied*). Likewise, the limitations period for a federal bank fraud charge is ten years (and the bank fraud statute is notoriously broad). Regardless of whether the limitations periods have expired, the grand jury may still issue reports related to misconduct by public officials, even where no criminal charges are contemplated. See, e.g., *Ferguson v. Houston Press Co.*, 1 S.W.2d 387 (Tex.App. - Texarkana 1927), *affirmed* 12 S.W.2d 125 (Tex.Com.App. 1929).

The grand jury could choose to issue a report about whether Collin County officials have enriched themselves at the expense of taxpayers, if for no other reason than to protect the future interests of Collin County taxpayers. If something unethical or illegal happened ten years ago, the grand jury would be in the best position to determine what happened, how it happened, and what can be done to prevent it from happening again. That said, my review of your business dealings was very superficial, so I must wonder what sort of transactions you, Mr. Paxton, and your partners have been involved in *since* 2006, whether with Unity Resources, Eldorado-Collin, or some other entity. Perhaps the grand jury might want to question you and Mr. Paxton about that, too.

According to your official website, your office has twenty-four commissioned investigators and a Special Prosecution Division that prosecutes “financially motivated criminal activity, organized crime, public integrity matters, and other complex or sensitive cases...” None of your staff are going to investigate Mr. Paxton, however, if they know that the investigation may lead back to you.

Similarly, the Texas Rangers will not investigate because their policy on government corruption investigations requires a prior written commitment from the local prosecutor (*i.e.*, you) that any case they bring will be prosecuted. I seriously doubt that you made a commitment to the Rangers that you will prosecute your friend and business partner.

In light of all of this, you had (and have) a duty under the state bar rules to recuse yourself from Mr. Paxton's case. *See* Texas Disciplinary Rule of Professional Conduct 1.06. You cannot represent the interests of the State of Texas when those interests might conflict with your interests or your business partner's interests.

It is the policy of this state that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

Tex. Govt. Code § 572.001(a); *see also* § 572.051(a).

If you do not recuse yourself voluntarily, the grand jury could ask the court to remove you involuntarily. The Thirteenth Court of Appeals has held that “[a] judge has the authority, as well as an obligation, to appoint an attorney pro tem to assist a grand jury that intends to criminally investigate the district attorney.” *In re Guerra*, 235 S.W.3d 392, 414 (Tex.App.–Corpus Christi 2007, *orig. proceeding*), disapproved on other grounds by *In re Blevins*, --- S.W.3d ----, 2013 WL 5878910 (Tex. 2013).

I urge you to recuse yourself from any investigation of Mr. Paxton, and I further urge you to disclose any other business relationships that you have or have had with Mr. Paxton.

Thank you in advance for your consideration.

Sincerely,

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

Ty Clevenger

cc: The Hon. Angela Tucker, Judge  
199<sup>th</sup> District Court  
Grand Jurors  
199<sup>th</sup> District Court  
Mr. J. Kevin McClendon, Asst. U.S. Attorney  
Office of the U.S. Attorney for the Eastern District of Texas  
Mr. Thomas M. Class, Sr., Special Agent in Charge  
FBI Dallas Division