

Nancy Drew

JUL 31 2023

CLERK OF THE COURT

**THE SENATE OF THE STATE OF TEXAS
COURT OF IMPEACHMENT**

IN THE MATTER OF
WARREN KENNETH PAXTON, JR.

**ATTORNEY GENERAL WARREN KENNETH PAXTON JR.'S
MOTION TO EXCLUDE EVIDENCE OF ANY ALLEGED CONDUCT
THAT OCCURRED PRIOR TO JANUARY 2023**

The House and its counsel have promised the public that the evidence against the Attorney General is “clear, compelling and decisive” and “ten times worse than what has been public.” But those statements, which have oft been quoted and re-quoted by the liberal press, were nothing but bluster and bluff. To be clear, the aggressive, reckless, misleading comments are flat wrong, and it is hard to imagine the House could exaggerate the scant “evidence” any more. Now that the House Managers have been forced by this Court to turn over their evidence through document production, it is clear that the evidence the House Managers have gathered is 100 times less compelling than what has been proclaimed. Indeed, now that the House Managers have produced more than fifty boxes of documents, there is little to no evidence whatsoever that supports their baseless allegations of wrongdoing, much less evidence that can support impeachment of the duly elected Attorney General of the State of Texas. The evidence provided by the House Managers is flimsy at best and insulting at worst. The House Manager’s initiation of this whole proceeding and the so-called evidence upon which it relies is an utter farce.

But ultimately the House’s weak evidence is of no matter. As set forth in General Paxton’s corresponding Motion to Dismiss filed along with this Motion, an impeachment proceeding simply cannot be based on evidence of alleged conduct that was publicly known and that occurred before the official’s election. As fully explained in the corresponding Motion, this rule, known as the “prior-term doctrine,” is firmly rooted in Texas statutory law, Texas Supreme Court decisions, and Texas impeachment precedent.

Unfortunately for the House’s misguided effort, with rare exception, the entirety of the evidence that the House Managers have produced and ostensibly intend to rely upon is based on conduct that occurred prior to January 2023. Because that is true, those Articles should be summarily dismissed, because to pursue an impeachment based on such evidence would equate to

an illegal impeachment, that is, an impeachment proceeding that is directly contrary to the Government Code, Texas case law, and impeachment precedent. And, for purposes of this Motion, none of the evidence that occurred prior to January 2023 can be legally considered; all courts of our great state would determine that this evidence is irrelevant.

In November 2022, Texas voters overwhelmingly reelected Attorney General Paxton to serve his third consecutive term, despite well-funded opposition in both the primary and general elections. Unable to defeat the Attorney General at the polls, the architects of the present impeachment caused the House to quickly file and pass twenty Articles of Impeachment—in a mere three days, presented at a four-hour hearing. The allegations making up the Articles contain unsupported, vague, and irrelevant assertions of non-impeachable conduct. Importantly, with one exception, the Articles are not based on any alleged conduct that occurred after the election of November 2022, or after the Attorney General Paxton began his third term in January 2023. Further, the Articles allege nothing that Texas voters have not heard from the Attorney General’s losing political opponents—and their donors and supporters—for years. None of the allegations that occurred prior to January 2023 and make up nineteen of the Articles of Impeachment can or should be considered by this Court. The law requires that all such evidence be excluded.

STANDARD OF LAW

Pursuant to the Texas Rules of Evidence, “any preliminary question about whether... evidence is admissible” is a decision for the Court. Tex. R. Evid. 104(a);