

**FILED** P.7

Chris Daniel  
District Clerk

NOV 27 2017

**FILED UNDER SEAL**

NO. 1555102

Time: \_\_\_\_\_  
Harris County, Texas

By \_\_\_\_\_  
Deputy

THE STATE OF TEXAS § IN THE DISTRICT COURT  
V. § HARRIS COUNTY, TEXAS  
WARREN KENNETH PAXTON, JR. § 177<sup>TH</sup> JUDICIAL DISTRICT

**STATE'S SEALED MOTION TO UNSEAL ITS SEALED REPLY  
TO PAXTON'S SEALED MOTION TO DISMISS INDICTMENT**

TO THE HONORABLE ROBERT JOHNSON, PRESIDING JUDGE:

The Special Prosecutors, BRIAN WICE, KENT SCHAFFER, and NICOLE DEBORDE, acting on behalf of the State of Texas in these matters as Collin County District Attorneys *Pro Tem*, file this Sealed Motion to Unseal its March 27, 2017 Reply to Warren Kenneth Paxton, Jr.'s Sealed Motion to Dismiss the Indictment, and in support thereof will show the following:

**PAXTON'S SEALED MOTION AND THE STATE'S SEALED REPLY**

On March 16, 2017, Paxton filed a "Motion to Dismiss and Set Aside Indictment for Prosecutorial Misconduct Before the Grand Jury (Failure to Register Indictment)". Judge George Gallagher ordered Paxton's defense team to file the motion under seal because the allegations in it involved events that allegedly transpired before the grand jury. On March 27, 2017, the State filed a detailed reply to Paxton's motion to dismiss under

seal in accordance with Judge Gallagher's order.<sup>1</sup>

Judge Gallagher conducted a hearing on the motion to dismiss on March 29, 2017 in Collin County after ordering the courtroom closed to the public. On March 30, 2017, Judge Gallagher entered an order denying Paxton's motion to dismiss the indictment. Neither Judge Gallagher nor this Court has ever entered an order unsealing Paxton's motion to dismiss or the State's reply.

**PAXTON SUPPORTER AARON HARRIS VIOLATES A COURT ORDER  
BY PUBLISHING A COPY OF PAXTON'S SEALED MOTION TO DISMISS**

On November 20, 2017, Texas Monitor blogger Jon Cassidy contacted Special Prosecutor Brian Wice seeking comment on a post by Aaron Harris on his Twitter account (@aaronh125) and Facebook page. Harris is a blogger for Direct Action Texas, a self-styled "political fraud-busting unit."<sup>2</sup> He was also the subject of a fawning profile by Empower Texans,<sup>3</sup> a Paxton-friendly organization for which Cassidy blogs. Harris' blog post, "Political Repression – Alive and Well in Paxton's Trial," made

---

<sup>1</sup> A copy of the State's sealed reply is attached.

<sup>2</sup> Eric Celeste, "How Dallas Elections Really Work," D MAGAZINE, August 2017.

<sup>3</sup> Ross Kecseg, "Aaron Harris: Brash, Bold, Effective," [www.empowertexans.com](http://www.empowertexans.com), November 19, 2016.

a series of references to a copy of Paxton's sealed motion to dismiss that Harris had managed to obtain although this sealed motion has never been ordered unsealed.<sup>4</sup>

On November 20, Wice responded to Cassidy as follows:

- Because the Texas Code of Criminal Procedure mandates that grand jury proceedings are confidential, Paxton's motion to dismiss and the State's response to it were ordered sealed by Judge Gallagher and the hearing on the motion was conducted in a courtroom Judge Gallagher ordered closed to the public. *Because neither Paxton's motion to dismiss nor the State's response has ever been ordered unsealed, they are unavailable to the public. The only parties who are legally privy to them are the Court, the special prosecutors, and Paxton's defense team.* Accordingly, as an officer of the court, I am ethically precluded from responding to your request for comment. (emphasis added).

Later that day, Cassidy posted an article for Texas Monitor,<sup>5</sup> entitled "Sealed [sic] brief: Paxton prosecutors 'misled grand jury' to secure indictment," parroting the claims in Paxton's sealed motion, and noting the "sealed [sic] brief was posted to DirectActionTX.com by conservative activist Aaron Harris earlier today."<sup>6</sup> The post quoted Harris as claiming,

---

<sup>4</sup> Copies of Harris' article, his Twitter feed, and Paxton's motion are attached. Tellingly and conveniently, Harris did not include that portion of Paxton's sealed motion indicating that it was filed under seal.

<sup>5</sup> Texas Monitor is yet another Paxton-friendly web site.

<sup>6</sup> A copy of Cassidy's article is attached.

*inter alia*, that the Special Prosecutors “fabricated a date” on which Paxton engaged in the charged conduct to avoid a statute of limitations problem. The article re-urged the claims that had been rejected by Judge Gallagher and the *en banc* Dallas Court of Appeals that former Collin County District Judge Chris Oldner had allegedly improperly entered the grand jury room during deliberations.

PAXTON’S SUPPORTERS TRUMPET HARRIS’ VIOLATION OF THE  
COURT ORDER SEALING THE MOTION TO DISMISS ON FACEBOOK

In the week that Cassidy’s post has been on-line, a number of Paxton supporters, including Michelle Smith, his most vocal acolyte, have linked the Harris and Cassidy postings to Paxton’s sealed motion to dismiss, on their Facebook pages. Not surprisingly, Smith has exercised her First Amendment right to once again make unwarranted and unsubstantiated accusations against the Special Prosecutors. In her November 22 post, Smith rants without legal or factual support, and without regard to the fact that the sealed motion to dismiss has never been unsealed, that the Special Prosecutors “can blatantly lie” and “destroy [Paxton’s] life” and that “how purely evil this world is.” In a November 21 post, Smith refers

to “the latest bombshell developments in the political persecution against [Paxton]” and to the “behind-the-scenes corruption that is being waged [by the Special Prosecutors] against a stalwart conservative.”

This latest and wholly unwarranted attempt by Paxton’s supporters to craft a narrative that finds no support in reality and to continue to castigate, vilify, and denigrate the Special Prosecutors on social media and in the court of public opinion is based on a document that was ordered sealed, never ordered unsealed by any judge, and disseminated in direct violation of a court order. Fundamental fairness dictates that the State’s sealed reply be ordered unsealed so that fair-minded members of the public can see for themselves that the assertions in Paxton’s motion are wholly without merit and the *ad hominem* accusations in the posts that reference the motion sealed by court order are purely fiction.

#### PRAYER FOR RELIEF

The State of Texas prays that this Court grant this sealed motion to unseal the State’s March 27, 2017 Reply to Paxton’s Motion to Dismiss the Indictment.

RESPECTFULLY SUBMITTED,

/s/ BRIAN W. WICE

---

**BRIAN W. WICE**

440 Louisiana Suite 900

Houston, Texas 77002

(713) 524-9922 PHONE

(713) 236-7768 FAX

Bar No. 21417800

LEAD COUNSEL

**KENT A. SCHAFFER**

712 Main Suite 2400

Houston, Texas 77002

(713) 228-8500 PHONE

(713) 228-0034 FAX

Bar No. 17724300

**NICOLE DeBORDE**

712 Main Suite 2400

Houston, Texas 77002

(713) 228-8500 PHONE

(713) 228-0034 FAX

Bar No. 00787344

**ATTORNEYS PRO TEM**

**THE STATE OF TEXAS**

**CERTIFICATE OF SERVICE**

Pursuant to Tex. R. App. P. 9.5(d), this sealed motion was served on all counsel via e-filing on November 27, 2017.

/s/ BRIAN W. WICE

\_\_\_\_\_  
BRIAN W. WICE

NO. 1555102

THE STATE OF TEXAS

V.

WARREN KENNETH PAXTON, JR.

§

IN THE DISTRICT COURT

§

HARRIS COUNTY, TEXAS

§

177<sup>TH</sup> JUDICIAL DISTRICT

**ORDER**

After considering the State's Sealed Motion to Unseal its Sealed Reply to Paxton's Sealed Motion to Dismiss the Indictment, it is hereby ORDERED, ADJUDGED, and DECREED that the State's Motion is:

\_\_\_\_\_  
GRANTED

\_\_\_\_\_  
DENIED

\_\_\_\_\_  
THE HONORABLE ROBERT JOHNSON

Presiding Judge

177<sup>th</sup> District Court

Harris County, Texas