

THE STATE OF TEXAS § IN THE DISTRICT COURT OF
vs. § TRAVIS COUNTY, TEXAS
THOMAS DALE DELAY § 331ST JUDICIAL DISTRICT

STATE'S MOTION TO RECUSE THE HONORABLE B.B. SCHRAUB
TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES THE STATE OF TEXAS, by and through its District Attorney, Ronald Earle, and pursuant to Rules 18a and 18b of the Texas Rules of Civil Procedure, moves the Honorable B.B. Schraub to do one of the following: (1) assign the case to one of the Travis County Criminal District Judges, (2) appoint a presiding Travis County District Judge to assign the case to the criminal court rotation process, (3) recuse himself, or (4) request the Governor to appoint the Texas Court of Criminal Appeals to assign a judge to hear this motion for recusal, respectfully showing as follows:

1. Rule 18a, T.R.C.P., Recusal or Disqualification of Judges, provides in part:

(a) At least ten days before the date set for trial or other hearing in

Filed In The District Court
of Travis County, Texas

NOV 03^{LRF} 2005

at 9:41 A.M.
Amalia Rodriguez-Mendoza, Clerk

any court other than the Supreme Court, the Court of Criminal Appeals or the court of appeals, any party may file with the

clerk of the court a motion stating grounds why the judge before whom the case is pending should not sit in the case.

(b) Prior to any further proceedings in the case, the judge shall either recuse himself or request the presiding judge of the administrative judicial district to assign a judge to hear such motion.

2. Rule 18b, T.R.C.P., Grounds for Disqualification and Recusal of Judges, provides in part:

(2) Recusal – A judge shall recuse himself in any proceeding in which:

(a) his impartiality might reasonably be questioned;

(b) he has a personal bias or prejudice concerning the subject matter or a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

3. The State contends that Judge B.B. Schraub's impartiality may reasonably be questioned and he may reasonably be perceived to have a personal bias in favor of the Defendant, Thomas Dale DeLay, or against Ronald Earle, the Travis County District Attorney's Office, the State of Texas and/or personal knowledge of disputed evidentiary

facts regarding the State of Texas and/or the Defendant, Thomas Dale Delay.

4. The State contends that Judge B.B. Schraub has been appointed Presiding Judge of the Judicial District by the Governor's office for the State of Texas and Judge Schraub is up for reappointment in January 2006.
5. The Defendant filed a successful motion for recusal against Judge Bob Perkins on the basis that Judge Perkins had made political contributions "to causes and persons opposed to Tom Delay."

The Defendant argued that Judge Perkins had "involved himself in political matters, invariably aligning himself in opposition to Tom Delay and Tom Delay's political affiliations."

The same argument can and now must be made with respect to Judge B.B. Schraub. Judge Schraub has made political contributions to Republican candidates on several occasions in recent years. Applying the same reasoning that the Defendant used, the State of Texas now argues that Judge B.B. Schraub has made political contributions to causes and persons aligned with the Defendant, Thomas Dale Delay, and opposed to the State of Texas in this matter.

6. Public records from the Texas Ethics Commission regarding Judge

Schraub's political contributions reveal the following:

Date	Amount	Recipient
State Contributions		
6-30-00	\$500.00	Texans for Rick Perry
12-4-00	\$250.00	Senator E. Jeffrey Wentworth
9-12-01	\$1,000.00	Texans for Rick Perry
11-28-01	\$500.00	Rep. Edmund Kuempel
2-8-02	\$400.00	Rep. Edmund Kuempel
2-13-02	\$200.00	Sen. E. Jeffrey Wentworth
3-21-02	\$500.00	Rep. Edmund Kuempel
Federal Contributions		
6-30-99	\$500.00	Bush for President, Inc.
5-31-00	\$1000.00	Bush for President, Inc.
7-29-00	\$500.00	Bush for President, Inc.
10-7-02	\$250.00	Texans for Senator John Cornyn, Inc.

The aggregate total of these contributions is at least equivalent to the aggregate total of Judge Bob Perkins' contributions; thus, the rationale that mandated Judge Perkins' recusal would mandate Judge Schraub as well.

7. Although all of Judge Schraub's contributions were to Republican candidates, of particular note are the contributions to Governor Rick Perry. Governor Perry was a major figure in the redistricting effort that the defendant successfully argued to Judge Duncan was at the heart of these indictments. In fact, Governor Perry played the crucial role in that effort by calling special sessions of the Texas Legislature – an act only the Governor of the State of Texas is entitled to do – in order to give the Legislature the time and authority necessary to complete what the Defense has claimed was Tom DeLay's redistricting map. Because Judge Schraub has donated to Governor Perry, he has disclosed through this free speech that he agrees in principle with Perry's agenda regarding Tom DeLay's redistricting map, and therefore his impartiality about the subject matter at issue in this case, and a potential bias in favor of the Defendant and against the State could reasonably be questioned.
8. Thus, this is not simply a request for a Republican Administrative Judge appointed by a Republican Governor to be removed from a case where there is a bitterly partisan Republican defendant, but rather a specific instance where a staunch Republican has repeatedly donated

to a central figure in the subject matter of this case, and his impartiality might reasonably be questioned.

9. Rule 18b **mandates** that “judges **shall** recuse themselves in proceedings in which their impartiality might reasonably be questioned.” (emphasis supplied). This recusal language is mandatory, not discretionary. The standard is objective, not subjective. *Rogers v. Bradley*, 909 S.W.2d 872 (Tex. 1995). If a reasonable citizen became aware that Judge Schraub had made political contributions to the very Governor who had (1) appointed him to that seat, (2) has the power to reappoint him to that seat, and (3) played a central role in the legislative redistricting of Congressional seats, that reasonable citizen would question whether Judge Schraub was impartial. That being the case, Judge Schraub should recuse himself.
10. Canon 3 of the Texas Code of Judicial Conduct provides that a judge should avoid impropriety and the appearance of impropriety in all of the judge’s activity. Canon 5 cautions judges to refrain from inappropriate political activity. The bright light of public attention is focused on this case. Judge Schraub’s political contributions, always for Republican candidates, in a case where a prominent Republican office-holder is the Defendant, simply violates the “tain’t fair” rule.

11. To avoid the appearance of impropriety, Judge Schraub should recuse himself from appointing a judge to preside over this matter, or in the alternative, upon a hearing should be recused.
12. The State wishes to stress that it believes Judge Schraub to be completely fair and impartial, with a sterling reputation of honesty and integrity. However, **as the recusal of Judge Perkins reflected**, such is unfortunately no longer the standard in our state for the judiciary. If any reasonable person could question a judge's impartiality, the judge **MUST** be recused. To paraphrase former Chief Justice of the Texas Supreme Court, the Honorable John Hill, apparently it's time that the recusal statutes finally start being followed.
13. Because Governor Perry is inextricably intertwined with what the **Defendant** has repeatedly claimed is this "political" matter, specifically the subject matter of redistricting, then the appointment of an administrative judge to determine this matter should not be left to his appointment, again to avoid the appearance of impropriety – or as Defense counsel repeatedly stated, Republicans will say "We got our guy to appoint the judge against their guy" or Democrats will say "The fix is in" – the Court of Criminal Appeals should convene and

appoint a special administrative judge to hear this matter. This is unprecedented, but of course, so was recusing a judge based on his political contributions, especially in light of the fact that the Texas Code of Judicial Conduct specifically allows such contributions.

14. The State respectfully requests that Judge Schraub do one of the following: (1) assign the case to one of the Travis County Criminal District Judges, (2) appoint a presiding Travis County District Judge to assign the case to the criminal court rotation process, (3) recuse himself, or (4) request the Governor to appoint the Texas Court of Criminal Appeals to assign a judge to hear this motion for recusal. If Judge Schraub recuses himself, the State requests that Judge Schraub enter an Order of Recusal and that he requests the Governor to appoint the Texas Court of Criminal Appeals to assign another judge to hear this case.

15. Upon hearing by the judge assigned, the State requests that the Motion for Recusal be granted and another judge be assigned to hear this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ronald Earle", written in a cursive style.

Ronald Earle
Travis County District Attorney
Texas Bar Card #06344000
P.O. Box 1748
Austin, TX 78767-1748
(512) 854-9400

AFFIDAVIT

THE STATE OF TEXAS §

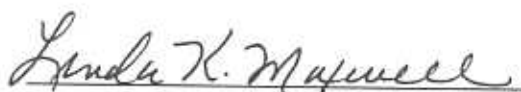
COUNTY OF TRAVIS §

BEFORE ME, the undersigned authority, on this day personally appeared Ronald Earle, who being by me duly sworn, stated on his oath the following:

“My name is Ronald Earle. I am the Travis County District Attorney. I have reviewed documents upon which the factual assertions contained in this Motion for Recusal are based and those factual assertions are true and correct to the best of my information and belief.”


Ronald Earle


SUBSCRIBED AND SWORN TO before me on this the 3rd day of November, 2005.


Notary Public in and for
The State of Texas



CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of this motion has been served on Defense Counsel Dick DeGuerin by hand delivery and/or facsimile on this the 3rd day of November, 2005.

A handwritten signature in cursive script, appearing to read "Ronald Earle", written over a horizontal line.

Ronald Earle

NO. D1-DC-05-900725

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
THOMAS DALE DELAY	§	331 ST JUDICIAL DISTRICT

ORDER OF RECUSAL

I hereby RECUSE myself and request enter the following order:

- _____ (1) assign the case to one of the Travis County Criminal District Judges,
_____ (2) appoint a presiding Travis County District Judge to assign the case to
the criminal court rotation process,
_____ (3) request the Governor to appoint the Texas Court of Criminal Appeals
to assign a judge to hear this motion for recusal.

SIGNED in Austin, Travis County, Texas on this the _____ day of November,
2005.

JUDGE PRESIDING

NO. D1-DC-05-900725

THE STATE OF TEXAS	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
THOMAS DALE DELAY	§	331 ST JUDICIAL DISTRICT

ORDER

UPON PRESENTATION of the above and foregoing Motion to Recuse, I refuse to do so, but I request the Governor to appoint the Texas Court of Criminal Appeals to assign a judge to hear this motion for recusal.

SIGNED in Austin, Travis County, Texas on this the _____ day of November, 2005.

Judge B.B. Schraub