

transcripts out of public view by retroactively deeming them as having been filed only *in camera*, for review by the Court alone. Talarico for Texas now seeks intervention to obtain public access to Paxton’s sworn testimony. Texas law requires public disclosure of these depositions and other related court records. And the right of Texans to see these depositions matters more than ever: Paxton is running for U.S. Senate, and in less than three months, Texans will decide whether he is fit to represent them in one of the nation’s highest federal offices. Existing public reporting suggests that Paxton’s testimony raises substantial ethical questions.¹ Texans have the right to know what Paxton said under oath in these proceedings and see the whole story before they go to the polls in November.

2. There is no legal basis to withhold Paxton’s testimony from public view. Texas Rule of Civil Procedure 76a sharply restricts the circumstances in which court filings may be withheld from the public, and there is no basis for keeping the Paxton depositions, or the motions they accompanied, out of the public eye. They were not, in fact, filed for *in camera* review, much less “solely for the purpose of obtaining a ruling on the discoverability of such documents,” as Rule 76a(2)(a)(1) requires for a court record to be withheld from public disclosure. There is therefore no justification for continuing to hide Paxton’s sworn testimony from Texas voters.

3. The issue is of immense public importance and urgency given Paxton’s candidacy in a sharply competitive election for U.S. Senate. Talarico for Texas therefore seeks to intervene as of right under Rule 76a(7) to obtain an order allowing public access to Paxton’s deposition transcripts. Talarico for Texas requests expedited treatment of this motion as far in advance of the November election as possible.

¹ See Elizabeth Findell, *What We Learned from a Secret Deposition of Ken Paxton*, Wall St. J. (Apr. 20, 2026), <https://www.wsj.com/us-news/law/what-we-learned-from-a-secret-deposition-of-ken-paxton-7e3ebd4d>.

BACKGROUND

4. In 2016, Plaintiff Calco Land Development, L.L.C. (“Calco”) filed a lawsuit against Defendants Unity Resources, L.L.C. (“Unity”), Trade Rare, L.L.C. (“Trade Rare”), and several other individuals alleging securities fraud and related claims in connection with a mineral acreage purchase transaction facilitated by Unity. *See Plaintiff’s Fourth Amended Petition*, pp. 3, 19–30, filed Oct. 1, 2018. At the time of the transaction at issue, Paxton served as counsel to several parties in the case, including Unity, and advised on relevant securities disclosure obligations. *See In re Cook*, 629 S.W.3d 591, 595 (Tex. App.—Dallas 2021, orig. proceeding [mand. denied]) (en banc). Defendants thus sought to depose Paxton. *Id.* They were eventually able to do so subject to a protective order from this Court entered on March 21, 2019. *See generally Protective Order for Deposition of W. Kenneth Paxton*, dated Mar. 21, 2019. That protective order was subsequently amended on May 16, 2019, to remove restrictions on the scope of the deposition. *See generally Am. Protective Order for Deposition of W. Kenneth Paxton*, dated May 16, 2019 (“Amended Protective Order”).

5. The Amended Protective Order restricted the use of and access to Paxton’s deposition testimony. Among other things, it required any court filing containing portions of Paxton’s deposition transcript to be filed electronically with a “Contains sensitive data” designation, thereby restricting public access upon submission to this Court. *Amended Protective Order*, pp. 4–5. The Amended Protective Order further provided that, upon notice by another party that the deposition transcript was going to be used in a court filing, Paxton could move to permanently seal the records under Tex. R. Civ. P. 76a. *Id.*

6. Defendants deposed Paxton for the first time on August 19, 2019. *See In re Cook*, No. 05-19-01283-CV, 2020 WL 2552881, at *1–2 (Tex. App.—Dallas May 20, 2020, orig.

proceeding [mand. denied]) (mem. op.). During the deposition, a dispute arose as to the scope of questioning. *Id.* at *2. The parties called this Court and Paxton’s counsel orally moved for a protective order barring further questioning on the disputed topics, which this Court granted over the phone. *Id.* But the Court of Appeals granted mandamus relief vacating those restrictions, and the Supreme Court of Texas denied Plaintiff’s petition to overturn the ruling. *Id.* at *2–4; Order, *In re Calco Land Development, LLC*, No. 20-0583 (Tex. Sep. 3, 2021). Defendants then resumed and completed Paxton’s deposition on November 28, 2022. See Defendants’ Response to Motion to Seal Court Records of Plaintiff and W. Kenneth Paxton Jr., p. 3, filed May 22, 2023 (“Defendants’ Response to Motion to Seal”).

7. Shortly after Paxton’s first deposition, Defendants gave notice that they intended to file Paxton’s transcript as an exhibit in support of their motion for summary judgment and their motion for leave to designate Paxton as a responsible third party, both of which are substantive motions bearing directly on liability for the claims in the case. See Plaintiff Calco Land Development, L.L.C. and Non-Party W. Kenneth Paxton Jr.’s First Joint Motion to Seal Court Records, p. 3, filed Sep. 6, 2019. In response, Plaintiff and Paxton filed a motion to seal that transcript under Rule 76a. *Id.* Paxton’s first deposition transcript was subsequently filed as an exhibit to both motions per the Amended Protective Order. See Defendants’ First Supplement to Motion for Summary Judgment, filed Sep. 6, 2019 (“Defendants’ Motion for Summary Judgment”); Defendants’ Second Amended Motion for Leave to Designate General Paxton as a Responsible Third Party, filed Sep. 20, 2019 (“Defendants’ Motion for Leave to Designate Third Party”).

8. After Defendants completed Paxton’s second deposition, they moved to vacate this Court’s Amended Protective Order and gave notice they intended to file Paxton’s second

deposition transcript as an exhibit to that motion. Defendants’ Response to Motion to Seal, p. 3. Plaintiff and Paxton filed a second motion to seal that transcript under Rule 76a. Plaintiff Calco Land Development, L.L.C. and Non-Party W. Kenneth Paxton Jr.’s Joint Second Motion to Seal Court Records, filed Apr. 3, 2023. Paxton’s second deposition transcript was also filed with the motion per the Amended Protective Order. *See* Defendants’ Motion to Vacate or Modify Protective Order Regarding Paxton Deposition, filed Apr. 10, 2023 (“Defendants’ Motion to Modify Protective Order”).

9. On September 8, 2023, after Defendants filed a mandamus petition seeking to compel a ruling on the pending motions to seal, this Court denied both motions. Order, dated Sep. 8, 2023 (“Sept. 8 Order”). But in doing so, it also ordered that the protective order governing the depositions be modified “to include those documents file-marked as ‘Contains Sensitive Information’ and that those documents be considered for in camera inspection,” and stated that the Court would “hold a hearing as to the admissibility and discoverability of said documents as necessary preceding trial.” *Id.* at 2. The Court characterized this order as a “least restrictive alternative to sealing” the transcripts. *Id.* Although the transcripts were filed on the regular docket, as of today’s date, they remain hidden from public view along with Defendants’ Motion for Leave to Designate Third Party, Defendants’ Motion to Modify Protective Order, and any other exhibits that may have accompanied those motions.

BASIS FOR INTERVENTION AND PUBLIC ACCESS

10. Talarico for Texas is entitled to intervene to seek access to Paxton’s depositions under Rule 76a. And Paxton’s deposition transcripts, and the motions they accompanied, are court records subject to public inspection under Rule 76a. They were never sealed, and they were not in fact submitted *in camera*, much less submitted *in camera* solely to obtain a discoverability ruling—

the transcripts were filed in support of three of Defendants’ motions, none of which sought a ruling from this Court on the discoverability of those transcripts. There is accordingly no basis under Texas law or procedure to withhold them from the public. Keeping them secret violates Texas’s constitutional guarantee that judicial proceedings be free and open to public scrutiny.

I. Talarico for Texas is entitled to intervene under Rule 76a.

11. Talarico for Texas is entitled to intervene in this case to seek access to Paxton’s deposition transcripts. Rule 76a provides that “[a]ny person may intervene as a matter of right at any time before *or after judgment* to seal or unseal court records.” Tex. R. Civ. P. 76a(7) (emphasis added). The only exception is for parties who “had actual notice of the hearing” on a sealing motion. *Id.* Talarico for Texas had no such notice and therefore is entitled to intervene and seek access to Paxton’s deposition transcripts now. *See also Cunningham v. Hudspeth*, No. 01-25-00752-CV, 2026 WL 1338091, at *5 (Tex. App.—Houston [1st Dist.] May 14, 2026, no pet.) (mem. op.) (holding that Rule 76a requires a party seeking access to court records to intervene, rather than file a new suit).

II. The public is entitled to access Paxton’s deposition transcripts.

12. The public’s “right to access judicial proceedings” is constitutionally guaranteed as a “fundamental element of the rule of law.” *Baker v. Bizzle*, 687 S.W.3d 285, 294 (Tex. 2024) (citation omitted); *see also HouseCanary, Inc. v. Title Source, Inc.*, 622 S.W.3d 254, 263 (Tex. 2021) (recognizing Texas’s “fundamental commitment to open courts”). Rule 76a protects that fundamental right by creating a strong presumption of public access to court records. *See* Tex. R. Civ. P. 76a. And Rule 76a defines “court records” exceptionally broadly, to include “all documents of any nature filed in connection with any matter before any civil court.” Tex. R. Civ. P. 76a(2)(a). There are only three narrow exceptions: (1) documents filed with a court “in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents”; (2) documents in court

files to which access is otherwise restricted by law; and (3) documents filed in an action originally arising under the Family Code. *Id.* Otherwise, every document filed with a court is by definition a court record and must be made available to the public unless it is properly sealed. Tex. R. Civ. P. 76a(1), (3).

13. Both of Paxton’s deposition transcripts, as well as the motions they accompanied, are “court records” under Rule 76a. The transcripts were filed with the Court in connection with a civil matter, as exhibits to three pending motions. The Court’s September 8 Order held that the documents file-marked as “Contains Sensitive Information,” including the Paxton deposition transcripts, would “be considered for in camera inspection.” Sept. 8 Order, p. 2. But that holding provides no lawful basis for restricting public access to the transcripts. The documents were not, in fact, filed “in camera, solely for the purpose of obtaining a ruling on the discoverability of such [transcripts].” Tex. R. Civ. P. 76a(2)(a)(1). At the time they were filed, there was no suggestion that they were being filed *in camera* at all—they were marked as containing sensitive data, but, as is evident from the certificate of service on the First Supplement to Defendant’s Motion for Summary, “[p]ursuant to Texas Rule of Civil Procedure 21(a),” the filing and transcript were “served on all parties.” This included serving them on opposing counsel who, of course, already *had* the transcripts—they were present at the depositions in question.

14. As the Court of Appeals confirmed in *Cortez v. Johnston*, 378 S.W.3d 468 (Tex. App.—Texarkana 2012, pet. denied), the purpose for which a document is submitted to a court—not merely how one party seeks to label a document—controls whether the document falls within Rule 76a’s definitions and exemptions. In *Cortez*, a party argued that documents filed in an envelope marked “Sealed Documents” should be exempt from disclosure under Rule 76a as documents filed *in camera* to obtain a ruling on discoverability. *Id.* at 474. But the Court of Appeals

rejected that argument—neither party had requested that the court examine the documents *in camera* or sought a ruling on the documents’ discoverability. *Id.* The court therefore concluded that these documents were court records subject to public access. *Id.*

15. That same reasoning applies here. Although Plaintiff and Paxton sought, unsuccessfully, to designate the deposition transcripts as sealed, neither they nor Defendants asked the court to examine these transcripts *in camera* or rule on their discoverability. Instead, Defendants filed them in support of motions seeking rulings on other matters altogether. Paxton’s first transcript was filed in support of Defendants’ motion for summary judgment and motion to designate Paxton as a responsible third party, both of which addressed liability for the claims in the case and did not seek a ruling from this Court on any issue of discovery. *See Defendants’ Motion for Summary Judgment*, filed Sep. 6, 2019; *Defendants’ Motion for Leave to Designate Third Party*, filed Sep. 20, 2019. And Paxton’s second transcript was filed in support of Defendants’ motion to vacate or modify this Court’s protective order regarding Paxton’s deposition. *See Defendants’ Motion to Modify Protective Order*, filed Apr. 10, 2023. Although the motion concerned a protective order and could be characterized as relating to discovery, it could not have involved seeking a ruling on the *discoverability* of Paxton’s transcript itself. That issue had already been litigated and fully resolved by the Court of Appeals, which authorized Paxton’s second deposition to proceed in the first instance. *See In re Cook*, 2020 WL 2552881, at *1–2. Thus, based on how these transcripts were utilized by the parties and filed with this Court, they are “unquestionably . . . ‘court record[s]’ and presumed to be open to the public.” *In re Cook*, 629 S.W.3d at 609 (Smith, J., concurring).

16. At the time they were filed, the depositions had already been conducted—the discovery had occurred. There was no question of “discoverability” of the transcripts for the Court

to review. *Contra.*, e.g., *In re Strategic Impact Corp.*, 214 S.W.3d 484 (Tex. App.—Houston 2006, pet. denied) (per curiam) (ordering district court to conduct an *in camera* review of allegedly stolen documents to determine whether they must be produced to the opposing party). Rule 76a’s *in camera* exception therefore cannot possibly apply.

17. Because the Paxton deposition transcripts are court records, they are presumed to be available to the public, and the Court may not restrict access without following Rule 76a’s “stricter standards” for sealing them to limit disclosure. *Gen. Tire, Inc. v. Kepple*, 970 S.W.2d 520, 524 (Tex. 1998). The Court, however, *denied* Paxton’s motion to seal the transcripts. See Sept. 8 Order, p. 2. Defendants appealed that order but voluntarily dismissed the appeal before the Court of Appeals issued any substantive ruling. See Notice of Appeal, *Calco Land Development LLC v. Unity Resources LLC*, No. 05-23-00961-CV, filed Sep. 29, 2023; Memorandum Opinion, *Calco Land Development LLC v. Unity Resources LLC*, No. 05-23-00961-CV, dated Feb. 1, 2024. There is thus no argument that the Paxton transcripts are sealed.

18. The Court was correct to deny the motions to seal. Sealing court records is only appropriate upon a showing of a “specific, serious and substantial interest” that outweighs both the general presumption of openness of court records and any probable adverse effect sealing would have on general public health or safety. Tex. R. Civ. P. 76a(1)(a). The Court must also find that “no less restrictive means” will “adequately and effectively” protect the interest asserted. Tex. R. Civ. P. 76a(1)(b). And any order sealing court records must articulate the specific findings and conclusions of this balancing test, as well as specify the portions of court records to be sealed and the time period for which the portions of the court records are to be sealed. Tex. R. Civ. P. 76a(6); see also *Express-News Corp. v. MacRae*, 787 S.W.2d 451, 452 (Tex. App.—San Antonio 1990, orig. proceeding) (per curiam) (holding that, because court records are presumed open to the

public, any reason for the “closure or sealing” of such records “must be apparent and clearly articulated”). The Court’s order, however, fails to include any of these mandatory elements or explanations. *See Sept. 8 Order*, p. 2.

19. Finally, even if the Paxton deposition transcripts had not been filed with the court, they would still be court records which the public is entitled to access under Rule 76a(2)(c). That provision makes even “discovery, not filed of record,” a public court record if it “concern[s] matters that have a probable adverse effect upon . . . the administration of public office, or the operation of government.” Talarico for Texas has not seen the deposition transcripts. But based on public reporting, the transcripts directly implicate Paxton’s fitness for office in connection with his ongoing campaign for U.S. Senate. They therefore satisfy the Rule 76a(2)(c) standard, as well.

REQUEST FOR HEARING

Intervenor asks the Court to set this plea in intervention for an oral hearing as soon as possible.

PRAYER

For all of the reasons stated above, the Court should grant Intervenor’s request for an oral hearing as soon as possible, grant Intervenor’s plea in intervention, and order that Paxton’s deposition transcripts taken on August 19, 2019, and November 28, 2022, and attached as exhibits to court filings in this case, as well as the accompanying motions and any other exhibits attached to them, be made publicly available.

Dated: August 26, 2026

Respectfully submitted,

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