

Investigation of Gov. Perry picks up momentum

By [Tony Plohetski](#) and [Jonathan Tilove](#)

Soon after Gov. Rick Perry threatened to withhold millions in state money from Travis County District Attorney Rosemary Lehmborg's office unless she resigned after her drunken driving arrest — and on the very day that Perry made good on that promise — Craig McDonald typed out a two-page criminal complaint and sent it to officials to investigate.

After consulting with several lawyers, McDonald, a longtime Perry critic and the head of the government watchdog group Texans for Public Justice, was convinced Perry had broken state laws against coercion, bribery and abuse of authority. Yet with the spotlight still pointed firmly at Lehmborg, McDonald's claims got scant public attention.

Twenty days ago, that started changing.

In an April 1 interview with the American-Statesman and KVUE-TV, a special prosecutor appointed to investigate Perry said he was nearing the conclusion of a seven-month inquiry and hinted he may have a case. The governor responded by hiring a high-profile Austin defense lawyer. And on Monday, a judge convened a 12-member Travis County grand jury to hear evidence and consider an indictment.

“These things heat up slowly, but when there is some critical momentum, people start paying attention,” McDonald said.

Last week, the investigation began getting national play from bloggers, news networks and The New York Times as Perry has remained on the national radar since seeking the Republican nomination for president in 2012. His gubernatorial term ends in January, and he has not ruled out another presidential run.

At the same time, though, several law scholars and experts caution that any case against Perry is no legal slam-dunk. They say they are unconvinced he stepped over any legal line — and add that if he did, that line was razor-thin. Indeed, special prosecutor Michael McCrum may be able to get a grand jury made up of Travis County's largely Democratic voters to indict, they say, but obtaining a conviction from a jury in a different county (Perry would almost certainly press for venue change, they add) could be extremely difficult.

Others seem more convinced of the indictment possibility and cite at least one law Perry may have violated.

McCrum has declined to speculate on which laws Perry may have broken and has said publicly only that “I can tell you I’m very concerned about certain aspects of what happened here.”

At the time, and consistently since, Perry has said he merely exercised his constitutional authority in vetoing a budget item that would have granted \$7.5 million to the Public Integrity Unit, which investigates ethics complaints against elected officials and is housed in Lehmberg’s office.

No one disagrees that the governor has the authority to veto bills or items in the state budget and that doing so is a routine part of the legislative process. For instance, the governor may threaten to veto a lawmaker’s bill unless he alters it in some way.

But legal experts said what distinguishes Perry’s actions in the Lehmberg matter is that he attempted to influence an elected official who overwhelmingly won a county vote and over whom he has no purview. It wasn’t just a veto of a state appropriation, they contend, but an out-of-bounds political maneuver that broke the law.

They also point out a potential Perry benefit: Had Lehmberg, a Democrat, resigned, Perry would likely have appointed a Republican to step in.

Those experts said that action may have run afoul of laws prohibiting the “coercion of a public servant.”

According to the law, a person commits that crime if he “influences or attempts to influence a public servant in a specific exercise of his official power or a specific performance of his official duty — or influences or attempts to influence a public servant to violate the public servant’s known legal duty.”

That crime is a Class A misdemeanor, punishable by up to one year in jail and a \$4,000 fine.

Perry has said the public had lost confidence in Lehmberg after her DWI arrest — a crime for which she was later sentenced to 45 days in jail and that led to a civil lawsuit to remove her from office. Lehmberg prevailed in that lawsuit in December and remains in her position.

Officials confirmed to the American-Statesman at the time that Perry’s office had issued the threat, and a Perry spokeswoman told the newspaper that “our position has been communicated very clearly today to Sen. (Kirk) Watson,” an Austin Democrat.

Lehmberg has declined to comment on McCrum’s investigation. Travis County commissioners helped close the budget gap left by the veto, but some Public Integrity Unit employees had to be reassigned and others lost their jobs.

At a minimum, Robert Kepple, director of the Texas District and County Attorney’s Association, said McCrum is following a customary course for prosecutors in politically sensitive cases by allowing a grand jury to look at the evidence and decide whether a criminal case should move

forward. Prosecutors sometimes file a criminal charge prior to indictment, but the law still requires a grand jury review for that case to move forward.

“Obviously, it is a high-profile case, and no one would be surprised that you would present it to a grand jury and get them to take a look at it,” Kepple said. “Part of it is that the public obviously has interest in it — so taking it to a grand jury helps make sure that the public is satisfied the case had a full hearing, and it gives people a greater respect of the process.”

The Perry investigation comes after what has been a fruitful nine months for the governor after announcing he would not seek another term and was leaving the door open to a second presidential run.

At the time, few took very seriously the notion of another Perry campaign in the aftermath of the embarrassment of his 2012 White House bid.

But, with the daily pressure of the governorship — and another re-election — behind him, Perry, with smart new glasses and some self-deprecation, has skillfully used the time to get himself back into the national conversation as the maker of Texas economic success and a wild card candidate for president, not to be counted out or underestimated.

He traveled the country, backed by private advertising dollars, promoting Texas as a business destination and model of red state governance (his own); he discussed drug policy at the World Economic Forum in Davos, Switzerland; he won rave notices for his speech at the Conservative Political Action Conference outside Washington.

In early March, a CNN poll confirmed Perry was making headway in his bid to be taken seriously. He placed third among potential 2016 GOP presidential candidates, with 11 percent support, behind only Kentucky Sen. Rand Paul, and Rep. Paul Ryan, the Wisconsin congressman who was Mitt Romney’s running mate in 2012, and ahead of former Florida Gov. Jeb Bush, New Jersey Gov. Chris Christie and Texas Sen. Ted Cruz.

This past week, a new survey of Texas voters by Public Policy Polling found Perry had rebounded from his dismal standing two years ago — when only 39 percent of Texans held a favorable and 53 percent and unfavorable view of their governor — to a 48 to 44 percent positive to negative rating.

But that survey had just finished in the field when news broke of the governor hiring an attorney in anticipation of his possible indictment.

“Usually the word ‘indictment’ alone is enough to cause political folks to scurry,” said Larry Sabato, director of the University of Virginia Center for Politics. “But here we are talking about an action Perry took to punish a law-breaking Texas Democratic official. Perry has a boatload of problems, but I am not sure a very conservative GOP voter base will care that much.”

Southern Methodist University political scientist Cal Jillson offered a similar assessment.

“It’s hard for me to imagine the state of Texas is going to indict, convict and jail its longtime governor for what is arguably hardball politics,” Jillson said.

That said, Jillson said the case could complicate his presidential ambitions.

“The estimate and opinions of people are set in erratic ways. If there are a number of potential presidential nominees out there and one of them has been indicted, you might look to others, and the possibility of an indictment is a real stumbling block for him,” Jillson said. “And if it comes to trial when he would otherwise want to be out campaigning and preparing – and that could easily happen – it could certainly get in the way.”

Jillson said that unlike the so-called Bridgegate scandal in New Jersey, which has hurt Gov. Christie’s presidential prospects by feeding a narrative of a petty and vindictive politician, he did not think the known facts of this case were particularly damaging to Perry’s reputation. Jillson said Republicans have long been gunning for what they consider a hostile Public Integrity Unit, and Lehmborg handed Perry an opening to do something about it, which he did in full public view.

“Most Texans, if they thought about it, would have found themselves on Perry’s side,” Jillson said.

Steve Munisteri, chairman of the Texas Republican Party, said that barring a conviction – which he can’t see happening – he thinks this will not be an issue for Perry in 2016.

“I don’t think it’s going to create any waves once people hear what it’s about,” he said.

In the meantime, McCrum has said he thinks he will need several weeks, if not months, to finish presenting his case to the grand jury.

For his part, McDonald said he remains hopeful grand jurors will hold Perry accountable.

“We thought he was in violation of the law,” he said.

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