**NOS. 25-0674 & 25-0687**

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**IN THE SUPREME COURT OF TEXAS**

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**IN RE STATE OF TEXAS,**

***Relator.***

**IN RE GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS,**

***Relator.***

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# RESPONDENTS' CONSOLIDATED BRIEF ON THE MERITS

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## REASONS TO DENY THE PETITIONS

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The text and structure of the Texas Constitution preclude Relators' sought-after relief, and history confirms that quo warranto cannot lie against a legislator at common law. But even if it could, there is now no conceivable reason why Relators' claims would not be heard in district court first. Intent—the dispositive merits issue—would be a disputed fact question. During their 14 days outside the state, the Legislators never stopped working for their constituents. Their return is robust proof that they never intended to abandon their offices. Denying review would prudently obviate this Court's determination of fraught, unprecedented issues—including the Court's authority to act as factfinder, the Legislators' right to jury trial, and the scope of the Court's original jurisdiction.

Moreover, the Texas House—to which the Texas Constitution grants the sole power to enforce quorum and punish quorum breaks—is actively carrying out its constitutional mandate. Bills are pending that would increase penalties for breaking quorum. *See* Media Advisory, Texas House Republican Caucus (Aug. 25, 2025) (Resp.QWR.63). The House Republican Caucus voted to support those bills but simultaneously declined to censure its minority-party, quorum-breaking colleagues. *See id.*; Rep. Janis Holt X post (Aug. 25, 2025) (Resp.QWR.61). The legislative branch is making nuanced political judgments and taking care of its own business— further reason why the Court need not and should not wade in.

Relators claim the sky is falling, raising the specter of a permanent quorum break that forever shuts down the Legislature. But that is speculation, not reality. Quorum breaks have never halted floor activities for more than a few weeks, and the majority has usually achieved its goals in the end. Despite the overheated rhetoric, this quorum break was always understood to be temporary. On August 3, the House Speaker announced: "To be absolutely clear: leaving the state does not stop this house from doing its work. ***It only delays it.***" State.QWR.3 (emphasis added).

The Court should not take the unprecedented step of removing elected members of a co-equal branch—especially when the circumstances are neither exigent nor compelling. *See Hardberger*, 932 S.W.2d at 490.

## STATEMENT OF FACTS

The Legislators are duly elected and hard-working Members of the Texas House of Representatives. They all belong to the minority party and they all left the Texas for approximately 14 days in August 2025.[1] During that 14-day period, they never stopped working on their constituents' behalf. *See* Rep.QWR.Tabs 1-13.

From August 4, 2025 to the date of this filing, the Legislators have been continuously and tirelessly discharging their official duties, and their oaths, as members of the Texas House. Those duties do not require a member to always be at the Capitol or even in Austin—even during a legislative session. Resp.QWR.2, 6, 11, 15, 19, 22, 25, 30, 35, 44, 51, 54, 58. In fact, most of a member's time is not spent on the House floor, debating and voting on legislation, but elsewhere—communicating with constituents and stakeholders about pending and desired legislation, drafting and filing legislation, and working

[1] Approximately 56 members of the minority party broke quorum for some period of time, not exceeding 14 days.

with staff and colleagues on strategy for passing desired legislation and defeating undesired legislation. *See id.*

While outside the state, the Legislators faithfully carried out those duties. They regularly communicated with constituents and stakeholders, supervised staff to carry out office operations, provided analysis and highlights of the discriminatory impact of the proposed redistricting bill, and drafted legislation to be introduced upon their return. Resp.QWR.2-3, 6-7, 11-12, 15-16, 19-20, 22-23, 25-27, 30-32, 35-39, 44-47, 51-52, 54-55, 58-59. When the Legislators returned to Texas, they continued executing the same responsibilities. In addition, they performed the more public duties of their office—filing, debating, and voting on legislation on the House floor. Resp.QWR.7-8, 16, 20, 27, 32, 39, 47-52, 59.

Categorically, the Legislators had no intent to abandon their offices as House members. Resp.QWR.4, 8, 12, 16, 20, 23, 28, 33, 42, 49, 52, 56, 59. To the contrary, their oaths of office compelled them to resist the majority party's gerrymandering legislation, which the Legislators believed to be illegal, unconstitutional, and harmful to their constituents and the State. *Id.* This led the Legislators to leave Texas, which enabled them to increase public awareness of the harms caused by gerrymandering, to communicate with officials from other

states about gerrymandering and other issues, and to slow down the offending bill. Resp.QWR.3, 7, 12, 16, 19-20, 22-23, 26-27, 31-32, 36-37, 40-41, 45, 47, 51-52, 54-55, 58-59.

## SUMMARY OF ARGUMENT

Relators' quo-warranto petitions are novel, to say the least. They ask the Court to award unprecedented relief (expulsion of sitting legislators) while taking on an unprecedented role (factfinder) in unprecedented fashion (with original jurisdiction absent any exigency). This is not a well-worn path, for good reason.

First, as a matter of text and history, courts lack jurisdiction to grant the relief Relators seek. Glaringly, Relators rely on the common law concepts of "abandonment" and "nonuser" but point to ***not a single common-law precedent*** where a court has expelled a legislator, despite "quo warranto's common-law pedigree [that] stretches back nearly eight centuries." *Paxton v. Annunciation House*, *Inc.*, No. 24-0573, 2025 WL 1536224, at *7 (Tex. May 30, 2025). In fact, history decisively refutes Relators' request. The very historical sources Relators rely on show definitively that legislators were never subject to quo warranto. *See infra*, Part II.B.

The doctrines of legislative immunity, political question, and separation of powers strongly confirm this result. A break of quorum is a legislative act for which a legislator cannot be sued; any penalty is a nonjusticiable political question because the Texas Constitution textually commits such penalties to the House; and judicial interference with the House's prerogative would offend the separation of powers. *See infra*, Part II.A.&C. The petitions present a constitutional morass that should be rejected.

Narrower grounds for denial also exist. Without reaching the points outlined above, the Court could deny the petitions solely because exercising original jurisdiction would be improper. Original jurisdiction requires exigent circumstances, but none exist here—legislative quorum has been restored, and the House is zealously carrying out its constitutional prerogative to police floor attendance. *See infra*, Part I.A. Additionally, to prove Relators' quo-warranto ground of abandonment, this Court requires "unequivocal evidence of the voluntary rejection or resignation of the office." *Honey v. Graham*, 39 Tex. 1, 16 (Tex. 1873). Here, the evidence ***against*** abandonment is powerful: Respondents never stopped working for their constituents or fulfilling the ordinary duties of their office. They also returned to restore quorum after only 14 days.

Thus, intent—a fact question—is vigorously disputed. But the Court cannot act as factfinder, nor does it have any mechanism for convening a jury or conducting a trial. *See infra*, Part I.B. That is why the Court has consistently held that it may exercise its original writ jurisdiction only in the ***absence*** of disputed facts. The Governor attempts a half-hearted argument that the Court's jurisdiction is exclusive, but that is plainly wrong. *See infra*, Part I.C. In sum, to the extent any court is a proper forum, it is district court. The Court should deny the quo-warranto petitions.

## ARGUMENT

### I. Even if quo warranto were available, this Court's adjudication in the first instance would be plainly inappropriate.

Deeply rooted constitutional and common law principles preclude the relief Relators seek, but this Court need not reach those issues because Relators cannot properly invoke the Court's ***original*** jurisdiction.

#### A. The Court's original quo-warranto jurisdiction is narrow and rarely exercised.

In Texas, a district court is a court of general jurisdiction, consisting of "original jurisdiction of all actions, proceedings, and remedies." *Dubai Petroleum Co. v. Kazi*, 12 S.W.3d 71, 75 (Tex. 2000) (quoting TEX. CONST. art. V, §8). Quo-warranto actions are normally brought in district court, by the Attorney General, a county attorney, or a district attorney. *Paxton v. Annunciation House, Inc.*, No. 24-0573, 2025 WL 1536224, at *7 (Tex. May 30, 2025). This Court also has discretionary original jurisdiction of quo warranto actions as part of its original writ jurisdiction. *See* TEX. CONST. art V, §3(a); TEX. GOV'T CODE §22.002(a). As the Court recently observed, it has "entertained such requests on only a few occasions, always denying the writ." *Annunciation House*, 2025 WL 1536224, at *7.

To justify the exercise of its original quo-warranto jurisdiction, the Court requires "compelling reasons," including that "time is of the essence." *State ex*

*rel. Angelini v. Hardberger*, 932 S.W.2d 489, 490 (Tex. 1996) (orig. proceeding). Here, any purported urgency has vanished with the restoration of quorum and the signing into law of the redistricting bill. The only compelling reasons are decidedly ***against*** the Court's exercise of original jurisdiction.

**B. Any exigency is now over.**

As Relators acknowledge, the break of quorum is now over. State.Br.23. The Legislators have returned to the House, restoring the chamber's quorum for the second special session. *See id.* ("[Q]uorum was achieved on August 18."). The redistricting bill the Legislators oppose, and Relators desire, has been signed into law. *See* Greg Abbott X post (Resp.QWR.65). In short, the majority has achieved its goal.

Yet Relators still insist that "time is of the essence," not based on current events, but on hypothetical events that have not, and may never, come to pass. State.Br.22. They argue "there is no guarantee that the Legislators—or other State Representatives—will not again flee the State and deprive the House of a quorum." *Id.* at 23. But jurisdiction requires a "genuine, concrete, and tangible" dispute and cannot rest on "speculative, contingent, or hypothetical" events. *Tex. Dep't of Fam. & Protective Servs. v. Grassroots Leadership, Inc.*, No. 23-0192, 2025 WL 1642437, at *12 (Tex. May 30, 2025).

Moreover, this Court has held that jurisdiction cannot hinge on the possibility that the same "offense" may be repeated. *See Williams v. Lara*, 52 S.W.3d 171, 184-85 (Tex. 2001) (holding that former prisoners' suit about jail conditions was mooted by their release, and refusing to base jurisdiction on the assumption that they might reoffend). The Court should similarly decline to base its original jurisdiction on speculation that these House members—much less *other* House members not parties to this suit—might someday break quorum.

Relators raise the specter of a hypothetical quorum break that could extend indefinitely, paralyzing the legislative branch, and leaving it without an effective remedy. Such a scenario, if it ever were to occur, may present an exigent circumstance. But other barriers—such as a disputed fact question or right to jury trial—could still prevent the Court from exercising *original* jurisdiction. In that event, a future relator always has an available forum—district court—and could seek expedited review and disposition.

Of course, a permanent quorum break has never occurred, and—if past is prologue—is unlikely to ever occur. While theoretically possible, a permanent quorum break would founder on the shoals of practicality. Any break of quorum is notoriously difficult to initiate and maintain for many reasons: disagreement with the tactic, internal disunity, inability to leave a job or family, monetary cost,

the possibility of arrest, and now the addition of monetary and other penalties assessed by the House.

Because of these practical barriers, quorum breaks are necessarily temporary.[2] In fact, on August 3, the House Speaker himself announced, "To be absolutely clear: leaving the state does not stop this house from doing its work. ***It only delays it.***" State.QWR.3 (emphasis added). Quorum breaks have never halted legislative business for more than a few weeks, and the majority has usually achieved its goals in the end.[3] The length of quorum breaks has actually decreased over time—this one, lasting 14 days, was one of the shortest on record.[4] The downward trajectory is no accident; it corresponds to the gradual increase in penalties imposed on quorum-breakers by the legislative branch.

Moreover, despite the State's claim that quorum-breaking is a "recent innovation," State.Br.11, quorum-breaking is a form of filibuster that has been recognized since the Republic's founding. Indeed, at the Constitutional Convention, during the debate over where to set quorum for each chamber of Congress, the framers explicitly recognized that a minority faction "may seize a

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[2] Hayden Betts, *Denying Quorum Has Been a Texas Political Strategy Since 1870*, THE TEXAS TRIBUNE (Aug. 3, 2025), available at https://www.texastribune.org/2025/08/03/texas-quorum-breaks-history/

[3] *Id.*

[4] *See id.* (describing quorum breaks of four days (1979), 46 days (2003), and six weeks (2021)).

moment" to break quorum, especially if what constituted a quorum was set by the Constitution itself, citing examples of that happening in the states. James Madison, *The Debates in the Federal Convention of 1787* 377 (Gaillard Hunt & James Brown Scott eds., Oxford Univ. Press 1920) (remarks of Gov. Morris). Ultimately, the Framers reached the same compromise that was later reflected in the Texas Constitution: set a fixed number for quorum, but explicitly permit Congress to take measures to compel the attendance of absent members in order to guard against "the inconveniency of successions." *See Id.* (remarks of Mr. Elseworth); U.S. CONST. Art. I, Sec. 5. And the Framers of the Texas Constitution made a conscious decision to set the bar for quorum higher than a simple majority, which "reflects distrust of the legislature, a distrust not arising from the Reconstruction experience as one might assume, but traceable to the Republic and its constitution." George D. Braden et al., *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 118 (1977) (citing A. J. Thomas et al., 1 Vernon's Annotated Constitution of the State of Texas: Interpretive Commentaries 571-72 (Vernon Law Book Co. 1955)).

The Governor complains that the failed special session wasted taxpayer funds. Gov.Br.53. Yet he ignores the waste caused by this very proceeding. If the Legislators are removed from office, the taxpayers will have to fund special

elections in 13 districts. If the Legislators compete in and win those special elections—a likely scenario—this entire proceeding, and the special elections, would have achieved nothing except to deprive the Legislators' constituents of representation in the interim—a grave injury to the voters. "A fundamental principle of our representative democracy is, in Hamilton's words, that the people should choose whom they please to govern them.'" *Powell v. McCormack*, 395 U.S. 486, 547 (1969). As Amici House members wisely observe, "neither the Governor nor this Court are [the Legislators'] boss—the voters of [their] district[s] are. If voters dislike what [they have] done, they'll fire [them] on Election Day." Amicus Br. of Reps. Moody and Gonzalez at 13.

In sum, no urgency exists that might justify the exercise of this Court's original jurisdiction. To the contrary, the Legislative Branch is actively carrying out its duty to address quorum breaks by seeking to increase penalties. *See* Media Advisory, Texas House Republican Caucus (Aug. 25, 2025) (Resp.QWR.63). Importantly, a motion to censure their quorum-breaking colleagues for past conduct ***failed*** in the House Republican Caucus. *See* Rep. Janis Holt X post (Resp.QWR.61). The Legislative Branch is making nuanced political judgments; the Court need not and should not intervene.

### C. There is no reason for this Court to assume, in unprecedented fashion, the role of factfinder.

No precedent exists for the Court to act as factfinder. Now that any exigency is over, there is no need to even consider wading into such utterly uncharted territory.

#### 1. Abandonment turns on fact questions, including intent, which are hotly disputed.

Without even turning to the deeper jurisdictional problems, the Court's original jurisdiction is defeated if the writ depends on a disputed fact issue. *See Love v. Wilcox*, 28 S.W.2d 515, 519 (Tex. 1930) (no original jurisdiction when determination is "dependent upon the determination of any doubtful question of fact.") (quoting *Teat v. McGaughey*, 22 S.W. 302, 303 (Tex. 1893)); *cf. Hardberger*, 932 S.W.2d at 490 (accepting jurisdiction because, in part, "there are no disputed issues of fact."). The only conceivably proper forum would be district court.

Relators assert they are entitled to final judgment as a matter of law because the Legislators have "abandoned" their offices simply by leaving the state to break quorum, which (Relators contend) means they were not performing the duties of their offices. State.Br.37-42; Gov.Br.37-59. But abandonment is not so easy, and it turns on facts, including the Legislators' intent. Moreover, disputed facts must be assessed by a factfinder. The Attorney

General previously endorsed that position: "Whether a specific legislator abandoned his or her office such that a vacancy occurred will be a fact question for a court." TEX. ATT'Y GEN. OP. KP-0382 at 3 (2021) (emphasis added).

As this Court has recognized, an office is not abandoned because an officer "absent[s] himself." *Honey*, 39 Tex. at 10, 15. "[T]here can be no abandonment of office without the intention to abandon it." *Honey*, 39 Tex. at 15; *Steingruber*, 220 S.W. at 78. And merely "absent[ing] [one]self" is not sufficient. *Honey*, 39 Tex. at 10, 15. There must be "actual or imputed intention on the part of the officer to abandon and relinquish." *Steingruber*, 220 S.W. at 78. The Court requires "unequivocal evidence of the voluntary rejection or resignation of the office." *Honey*, 39 Tex. at 16. And as the Court recognized in *In re Turner*, legislators "absent themselves" in order to express their "opposition" and "in order to prevent passage of [ ] legislation." 627 S.W.3d 654, 660 (Tex. 2021). This behavior is the exact opposite of abandonment.

Relators also allege that the Legislators have failed to comply with the duties of their offices. As a threshold matter, "[m]ere malfeasance or misfeasance in office, or even high crimes committed in office, do not of themselves vacate the office." *Honey*, 39 Tex. at 18. Moreover, a quorum-breaking legislator does not breach a duty—he exercises a power granted his

office by the Texas Constitution that "enables quorum-breaking." *See In re Abbott*, 628 S.W.3d 288, 292 (Tex. 2021) (orig. proceeding).

Relators attempt to sidestep the need for a factfinder by asserting that abandonment and malfeasance are demonstrated as a matter of law by the bare fact of the quorum-break, and that the operative facts are undisputed. State.Br.24-27; Gov.Br.33-35. However, a different undisputed fact—that the Legislators returned to the state and restored quorum after only 14 days—is potent evidence they did ***not*** intend to abandon their offices.

Indeed, the Legislators vigorously dispute that they intended any abandonment or malfeasance. Resp.QWR.4, 8, 12-13, 16, 20, 23, 28, 33, 42, 49, 52, 56, 59. As the record shows, even though they could not appear on the House floor during the 14 days they were absent from the state, they continuously carried out their other duties, including reviewing and drafting proposed legislation, raising awareness about redistricting efforts in Texas, and responding to constituent requests. *See generally* Resp.QWR.Tabs 1-13. "[I]nvolvement with [a legislator's] constituents regarding a pending issue" is a legislative function, as is discussion of legislation and persuasion of colleagues. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 158 (Tex. 2004). Indeed, the Constitution prohibits a person who is absent from the state "on business of the State, or the

United States" from being "deprive[d]...of being elected or appointed to any office …" *See* TEX. CONST. art. XVI, §9. The Legislators never stopped fulfilling their legislative duties and serving their constituents, even while outside Texas.

The Legislators' intent in breaking quorum was to oppose, and raise awareness about, a proposed law that they believed to be illegal and unconstitutional, and harmful to their districts and the state. Resp.QWR.4, 8, 12, 16, 20, 23, 27-28, 33, 42, 49, 52, 56, 59. A legislator's solemn oath is to "faithfully execute the duties of the office of [member of the House of Representatives] of the State of Texas, and [] to the best of [his] ability preserve, protect, and defend the Constitution and laws of the United States and of this State" TEX. CONST. art. XVI, §1. Relators disagree with the Legislators' motives and aims, but that disagreement does not establish that the Legislators abandoned their offices or committed malfeasance. Each legislator is elected precisely so that they will exercise independent judgment. If the voters disagree, they can cut the Legislators' service short on election day.

**2. The Legislators have a right to jury trial.**

Although jurisdictional issues preclude consideration of the merits, if the merits are considered, the Legislators demand a jury trial, as is their right. "A charge of forfeiture can only be made out on proof—proof sufficient to satisfy

twelve unprejudiced minds." *Honey*, 39 Tex. at 11 (quo warranto). "A proceeding under the quo warranto statute is a civil proceeding and governed by the rules applied to other cases." *Pease v. State*, 228 S.W. 269, 270 (Tex. App. 1921, writ ref'd). Just as Relators do not acknowledge material disputed facts, they do not explain how the Court could possibly conduct a jury trial. But Texas's broad jury right cannot be ignored. *See Matter of Troy S. Poe Trust*, 646 S.W.3d 771, 778-79 (Tex. 2022); *id.* at 781 (Busby, J., concurring) (describing jury-trial right as "a substantive liberty guarantee of fundamental importance") (citation omitted*); In the Matter of Troy S. Poe Trust*, 711 S.W.3d 648, 649 (Tex. 2024) (Busby, J., concurring in the denial of petition for review) (jury-right guarantee applies, among other things, to "ultimate issues of fact" in "equitable actions"). A jury trial can only occur in a trial court.

The right to jury trial is even more important in a case like this one, with a constitutional dimension. Relators are entitled, before they are stripped of the office the People entrusted to them, to due process guaranteed by the Texas and United States Constitutions. "The right to hold and exercise the functions of an office to which the individual may have been duly elected, may be regarded both as property and privilege, and therefore the incumbent can only be deprived of his office in [accordance with due process]." *Honey*, 39 Tex. at 11.

Whether the Legislators can continue to hold office should not be determined by another branch of government, much less in a summary proceeding without a jury. But if the Constitution's separation of powers are to be set aside, and the Legislators' judgment as members of the House of Representatives is to be put on trial, they are entitled, at base, to the procedural protections available to all litigants in trial-court proceedings, and to an eventual appeal. *See* Tex. R. Civ. P. 781 ("Every person or corporation who shall be cited as hereinbefore provided [in a quo warranto action] shall be entitled to all the rights in the trial and investigation of the matters alleged against him, as in other cases of trial of civil cases in this State . . . .").

The cases cited by the Governor, Gov.Br.36., do not support a different conclusion. In *Kennard*, the Louisiana law at issue expressly provided that, if an incumbent judge refused to vacate his bench to a commissioned successor, the successor has the right to seek a declaration that "shall be tried immediately without jury." *Kennard v. La. ex rel. Morgan*, 92 U.S. 480, 481-82 (1875). The Louisiana court properly refused the incumbent's jury-trial request "because the law under which the proceedings were had provided in [sic] terms that there should be no such trial." *Id.* at 483. In *Foster*, the removal proceedings actually were decided by a jury, which rendered a verdict against the official. *Foster v.*

*Kan. ex rel. Johnston*, 112 U.S. 205, 205-06 (1884) (discussing how the trial court "charged the jury" and led to a judgment on the jury's verdict). And in *Delmar Jockey*, the Court reviewed a state court's determination that a corporation forfeited its franchise based on a pleading that "amounted to a plea of confession" that "raised no issue" in dispute. *Delmar Jockey Club v. Mo.*, 210 U.S. 324, 333 (1908). None of these opinions hold or support a holding that denial of a jury trial in this case is allowed.

Quo warranto is a well-established common-law cause of action. Its "common-law pedigree stretches back nearly eight centuries." *Annunciation House*, 2025 WL 1536224, at *7. The notion that quo warranto is somehow outside Texas's broad right to jury trial is completely unsupported. A trial court is the only conceivably proper forum for this case.

### D. The Governor's argument that the Court has *exclusive* original jurisdiction is wrong.

The Governor (but not the State) makes a half-hearted argument that this Court *must* take jurisdiction. Gov.Br.30 ("[T]his Court is ***arguably*** the ***only*** court authorized to entertain [the quo warranto suit]") (second emphasis in original). The Governor is wrong. He contends that the Texas Constitution—"Article V, Section 3(a) and Section 22.002(a) of the Government Code"—

conveys exclusive original jurisdiction on this Court. Gov.Br.31. To the contrary, the plain language provides only that the Court ***may*** exercise original jurisdiction.

Article V §3(a) states that the "Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified," except against the Governor. TEX. CONST. art. V §3(a). The Legislature, in turn, provided that the Court "***may issue***…all writs of quo warranto…against…any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals." TEX. GOV'T CODE §22.002(a) (emphasis added). Neither section contains language conferring exclusive jurisdiction.

The Legislature knows how to confer exclusive jurisdiction over quo warranto writs on this Court. In section 22.002(c), the Legislature provided that "***Only the supreme court*** has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the ***officers of the executive departments of the government*** of this state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform." TEX. GOV'T CODE §22.002(c) (emphasis added).

The Governor relies on *Paxton v. American Oversight*, 716 S.W.3d 535 (Tex. 2025), *see* Gov.Br.31, but the opinion does not help him. It confirms only that section 22.002***(c)*** confers exclusive original jurisdiction. *Am. Oversight*, 716 S.W.3d at 542 ("section 22.002(c) states that ***only*** this Court has authority to [issue a writ of mandamus] 'against any of the officers of the executive departments of the government of this state'" and therefore confers exclusive original jurisdiction on this Court.)(emphasis in original). But the Governor does not, and cannot invoke subsection (c) because the Legislators are not executive department officers.

The Governor argues that Section 22.002***(a)*** confers exclusive original jurisdiction over quo warranto writs against a legislative officer, but nothing in Section 22.002(a) says "exclusive" or "only" or any equivalent. *Compare* TEX. GOV'T CODE §22.002(a) *with id.* §22.002(c) *and Am. Oversight*, 716 S.W.3d at 542-43. Contrary to the Governor's argument, Section 22.002(a) in no way requires the Court to exercise original jurisdiction. *See* TEX. GOV'T CODE §22.002(a). Instead, it is purely discretionary. *Id.* (providing that the Court "***may*** issue…all writs of quo warranto…against…any officer of state government," except the Governor, the Court of Criminal Appeals, and its justices.) (emphasis added). Applying *American Oversight*, section 22.002(a) and

article V section 3(a) do not contain the language of exclusivity that would overcome the constitutional presumption that the district court has original jurisdiction to decide the parties' dispute. *See* 716 S.W.3d 542-43; *see also In re Entergy*, 142 S.W.3d 316, 322 (Tex. 2004).

Moreover, Texas appellate courts are not designed, well-equipped, or best-suited to conducting a trial or fact-intensive hearing. Multiple procedural rules provide for or allow appellate courts to send fact issues, when they arise, to the trial court for determination. *See, e.g.*, TEX. R. APP. P. 20.1(b)(3)(B), 24.4(d), 36.3(b), 38.5(e)(2), 38.8(b)(2)-(4). The Governor's suggestion that the Court "could conduct a trial" or "utilize special masters to assist in gathering facts," Gov.Br.33, is both contrary to customary Texas appellate procedure and unnecessary—essentially, a solution in search of a problem. Allowing the district court to exercise its original jurisdiction, determine disputed facts, and conduct a jury trial is the most straightforward, procedurally consistent, and judicially efficient path.

The two United States Supreme Court cases cited, *id.*, do not hold otherwise. One case involved contempt of the Court's own order, and the other involved a matter of exclusive original jurisdiction that no other court could decide.

- In *United States v. Shipp*, after the Court ordered a sheriff to retain custody of a prisoner/petitioner pending his appeal, the sheriff allegedly aided and abetted a mob that removed the prisoner from jail and lynched him. 203 U.S. 563, 571-72 (1906). Determining whether the sheriff had acted in contempt of the Court's order required proof of "personal presence and overt acts" and would be "ascertained by testimony in the usual way." *Id.* at 574-75; *cf. Freeman v. Ferguson*, 292 S.W.2d 632, 633 (Tex. 1956) (resolving allegation of contempt of this Court).

- In *Kansas v. Colorado*, the Court confronted a claim by Kansas for damages based on Colorado' s violations of the Arkansas River Compact that no other court could decide. 533 U.S. 1, 4-5 (2001); *Kan. v. Colo.*, 185 U.S. 125, 139 (1902) (holding Court's original jurisdiction over dispute was "exclusive, as in its nature it necessarily must be"). After finding that violations had occurred, the Court remanded the case to a special master to determine an appropriate remedy. *Kan.*, 533 U.S. at 5-6.

Neither of these cases supports the argument that the Court should exercise original jurisdiction in a case requiring factual determinations and a jury trial when a district court also has jurisdiction—and is best equipped—to decide the parties' dispute.

## II. A writ of quo warranto is not available to punish quorum-breaking.

For several reasons, quo warranto is not available to expel the Legislators from office. First, the political-question doctrine and separation of powers prevent the Court from intruding into the House's prerogative to compel attendance and punish quorum-breaking. *See infra*, Part II.A. Second, the Court cannot issue a writ of quo warranto against a legislator. *See infra*, Part II.B. Third, legislative immunity protects the Legislators because they were performing

legislative functions. *See infra*, Part II.C. And, fourth, quo warranto would violate the Legislators' constitutionally-enumerated term of office and qualifications. *See infra*, Part II.D.

### A. The political-question doctrine—and respect for the separation of powers—prevents this suit.

It is telling that the State has not identified a single instance where a quo warranto action was used to declare that a legislator has abandoned a seat. That trend should continue, and the Court should decline to entertain the request. As the Court recently explained, it is vital to adhere to the Constitution's boundaries on the judicial power:

> If our courts were mere adjuncts of the other branches, rather than a purposefully independent branch, it would not matter much whether our courts ventured into non-judicial territory. But the People of Texas have instead delineated judicial authority with precision, both to protect the independence and accountability of the judiciary and to ensure that the other branches remain independent and accountable for their own actions.

*Grassroots Leadership*, 2025 WL 1642437, at *9.

This dispute presents a nonjusticiable political question. To afford the State the relief it wants, this Court must hold that the Representatives' method of legislation opposition—temporarily breaking quorum by leaving the state—resulted in legal abandonment of their elected positions; reject the strong evidence against a finding of abandonment; and determine what brightline rule

will now govern what parts of the legislative process legislators are permitted use, and to what extent, in order to oppose legislation on their constituents' behalf. No judicially manageable standards exist for resolving these questions. They necessarily implicate questions of legislative discretion, governmental operation, and how policymakers are permitted to prompt discussion, compromise, or information-sharing.

Further, the State asks this Court to dictate the crime and enact the punishment, both of which would circumvent the Legislature's constitutional authority and violate separation of powers. Rather than accepting that the Representatives are solely beholden to the discipline of the House, as the Texas Constitution requires, the State pursues through this quo warranto action the punishment it would have the Judiciary enact. It is an impermissible dilution of the separation of powers to which this Court has long been committed.

### 1. This is a political question.

The political question doctrine examines justiciability, a jurisdictional matter. *Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 260 (Tex. 2018). The doctrine is "primarily a function of the separation of powers" and "excludes from judicial review controversies that revolve around policy choices and value determinations constitutionally committed for resolution" to

nonjudicial government branches. *Elliott v. City of Coll. Station*, No. 23-0767, 2025 WL 1350002, at *3 (Tex. May 9, 2025) (also noting that the "operation of local government is a nonjusticiable political question for the legislature"). "Chief among [the factors indicating a political question] are whether there is 'a textually demonstrable constitutional commitment of the issue to a coordinate political department' or 'a lack of judicially discoverable and manageable standards for resolving it.'" *Van Dorn Preston v. M1 Support Servs., L.P.*, 642 S.W.3d 452, 458 (Tex. 2022) (citing *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

The Texas Constitution places the power to respond to legislators who break quorum firmly within the Legislative Department. "Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may provide." TEX. CONST. art. III, §10. As this Court has explained, "article III, section 10 enables 'quorum-breaking' by a minority faction of the legislature, [but] it likewise authorizes 'quorum-forcing' by the remaining members." *Abbott*, 628 S.W.3d at 292.

In *Abbott*, the Court closely examined the Texas Constitution's quorum provisions in the context of an earlier quorum break. Like the Legislators now, the Governor (then represented by the Office of the Attorney General) argued

that the dispute was a nonjusticiable political question. *See* Mandamus Pet., No. 21-0667, at 5-8. As the Governor explained, "Article III, section 10 expressly gives the House and Senate the power to 'provide' the 'manner' and 'penalties' under which members may be compelled to attend legislative sessions." *Id.* at 7.

Although the Court did not reach the political-question issue in *Abbott*, it agreed with the Governor about Article III, Section 10:

> Article III, section 10 imposes no restrictions on the means by which compulsion of the attendance of absent members may be achieved. Instead, ***it commits that question to the discretion of the chamber*** by authorizing the present members to 'compel the attendance of the absent members, ***in such manner and under such penalties as each House may provide***.'"

*Abbott,* 628 S.W.3d at 293 (quoting TEX. CONST. art. III, §10) (second emphasis in original). It naturally follows that Article III, Section 10's assignment to the Legislature to determine the manner and penalties for compelling attendance is "a textually demonstrable constitutional commitment of the issue to a coordinate political department." *Van Dorn Preston*, 642 S.W.3d at 458.

The State and the Governor here seek to expel the Legislators as a penalty for their quorum break, and to compel attendance by deterring future quorum breaks. But this effort intrudes squarely into the House's prerogative concerning the "manner" and "penalties" for compelling attendance. Whether a legislator's quorum-breaking constitutes misconduct (and whether that

misconduct should be punished, whether by expulsion or otherwise) requires investigation into the legislator's policy choices in exercising that constitutionally authorized behavior, a role constitutionally reserved to the House. *See* TEX. CONST. art. III, §11.

In *Abbott*, this Court noted that "whether it is a good idea for the [House] to arrest absent members to compel a quorum" was not before it, because that was a "political question[] far outside the scope of the judicial function." 628 S.W.3d at 291. But this dispute would require resolution of questions of legislative judgment concerning attendance, absence, arrest, and subjecting oneself to arrest. It would also require examination of the methods by which legislators further their opposition to controversial legislation. Good-faith disagreements about the best way to effectuate duties, serve constituents, prompt compromise, and spread awareness—including whether methods are justified—inherently involve questions of legislative judgment, which are political questions outside this Court's purview and should result in dismissal of the action. *See, e.g., Freeman*, 556 S.W.3d at 260 ("Whether the Army was justified in ignoring its requirements and constructing the kennel as it did is not a question a Texas court can answer. Thus, we hold that this case is

nonjusticiable due to the presence of an inextricable political question."); *Elliott*, 2025 WL 1350002, at *3.

Despite Relators' protestations, judicial intervention is unnecessary, as the Legislature has acted and continues to act to affirm its exclusive authority in this sphere. The Legislature has its own procedure for expulsion. For example, in 1870 the Senate considered how to punish several quorum-breaking members, deciding to expel only one senator for "violently resist[ing] arrest," while merely reprimanding others. *See* S.J. of Tex., 12th Leg., 1st C.S. 282-84 (June 29, 1870). The House has expressly provided that one of the several available punishment options for quorum breaking can include "expulsion in the manner prescribed by Section 11, Article III, Texas Constitution," which requires a two-thirds vote of the House. TEX. HOUSE OF REPRESENTATIVES, HOUSE RULES MANUAL, Rule 5, §3(d)(5), 89th Leg., Reg. Sess. (2025). Relators openly ask the Court to usurp the House's authority.

Precisely because "[e]ach House shall be the judge of the qualifications and election of its own members," TEX. CONST. art. III, §8, the judiciary has no authority to intrude on this constitutionally assigned legislative role. *Cf. State ex rel. Turner v. Scott*, 269 N.W.2d 828, 831 (Iowa 1978) (citing analogous Iowa constitutional provision in holding that a quo warranto proceeding against a

senator "involve[d] a nonjusticiable political question, the resolution of which is properly left to senatorial prerogative," and collecting cases from other states).

To declare that legislators legally forfeit their office solely by breaking quorum would render the Constitution's plain text nonsensical. Under Article III, §10, the House may "compel the attendance of absent members, in such manner and under such penalties as each House may provide." Yet, if a quorum break automatically effected a forfeiture of office, the House would, absurdly, be compelling the attendance of people who had already vacated their office. Texas courts "avoid constructions that would render any constitutional provision meaningless or nugatory." *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 580 (Tex. 2000). The courts cannot, on the one hand, eject a legislator from office, while the Legislature physically forces them back into chambers to continue acting as a legislator and imposes fines on them that are directly tied to their ongoing member operating accounts. *See* TEX. HOUSE OF REPRESENTATIVES, HOUSE RULES MANUAL, Rule 5, §3(d), 89th Leg., Reg. Sess. (2025).

A writ of quo warranto by the judiciary declaring a legislative seat vacant on account of participation in a quorum break would impermissibly encroach on the exclusive legislative power to respond to a lack of quorum and determine

how, if at all, to punish its members, including whether those members should continue serving.

### 2. A writ of quo warranto would violate separation of powers.

General principles of respect for the separation of powers compel the same result. The legislative immunity issue highlights the separation of powers concern; the two are closely related. *Perry*, 60 S.W.3d at 859 (noting legislative immunity stems from constitutional Speech and Debate Clauses that "embody fundamental separation-of-powers tenets"); *see also* TEX. CONST. art. II, §1. When acting in their legislative capacities, legislators are immune from liability, but not from discipline or attendance compulsion. As discussed *supra*, the Texas Constitution reserves to the Legislature the powers to "compel the attendance of absent members, in such manner and under such penalties as each House may provide," TEX. CONST. art. III, §10; and "punish members for disorderly conduct, and, with the consent of two-thirds, expel a member," TEX. CONST. art. III, §11.

In other words, the body that reviews representatives' behavior is the House (and the voters, during election years), not the Judiciary. As the legislative-immunity doctrine indicates, the Judiciary should neither examine nor punish a representative's legislative activities. Instead, where the State is

displeased with a legislator's policy-driven absence, the remedy is not to attempt to judicially oust the representative, but to encourage the House to act. Neither the Executive nor Judicial Branch may seize authority constitutionally committed to the Legislative Branch. *Webster v. Comm'n for Law. Discipline*, 704 S.W.3d 478, 487 (Tex. 2024) ("If one branch seeks to seize power belonging solely to another, the constitutional implication is obvious—the offending branch's claim is invalid."); *Freeman*, 556 S.W.3d at 249 ("To protect the separation of powers essential to the structure and function of American governments, . . . the Judicial Branch will abstain from matters committed by constitution and law to the Executive and Legislative Branches.").

Additionally, this Court has espoused the need to "refrain[] from exercising jurisdiction to resolve disputes between the other two branches that those branches could resolve for themselves. Even when the dispute is one between the members of one branch rather than one between the branches, we will avoid exercising jurisdiction out of respect for the separation of powers." *Webster*, 704 S.W.3d at 488 (cleaned up). In 2021, quorum-breaking legislators asked this Court to settle a dispute concerning attendance; this Court declined to do so, noting it was not the Judiciary's role. *See Turner*, 627 S.W.3d at 660 (declining to resolve dispute where legislators broke quorum, left the state, and

"continue[d] to absent themselves in order to prevent passage of voting legislation," finding issue was "primarily one of differences among legislators").

The State's separation-of-powers argument concerning the House's expulsion power is that successful quorum-breaking (apparently of any kind, in or out of state) renders the House's authority a "legal fiction," because "there is no power to expel absent a quorum." State.Br.43. But the Texas Constitution contemplates the reality of both absences and compulsion; both have their own power and both are involved in constitutional balancing. *See Abbott*, 628 S.W.3d at 291. This has worked since Texas's founding, and the Court should not disrupt that balance by seizing new powers for the judiciary.

The State's dissatisfaction with the Constitution's quorum requirement to seek expulsion—while other disciplinary measures do not require a quorum—is no argument that its plain text should be circumvented, enabling the judiciary to carry out the expulsion. And while the State argues that quorum-breaking to evade arrest (whether hiding or leaving the state) also limits the House's power, the State ignores the weights on the other side of the balancing test: the House is afforded serious compulsion powers in addition to any level of discretionary discipline. TEX. CONST. art. III, §10; TEX. CONST. art. III, §11*; see also Abbott*, 628 S.W.3d at 294 (noting arrest option might seem an "extreme step" but was

constitutionally permitted in the event physical compulsion became necessary). In any event, the State agrees the Representatives have returned. State.Br.39. No controversy is raised by any still-advanced complaint that the Representatives were temporarily not subject to physical compulsion. The State's request for speedy removal in fear of hypothetical future quorum-breaking finds no constitutional root. *See* State.Br.23.

The Court should decline to consider this dispute.

### B. The Court cannot issue a writ of quo warranto against a legislator.

#### 1. Quo warranto does not lie against a legislator at all.

Relators spend substantial space tracing the evolution of the ancient writ of quo warranto. *See generally*, State.Br.12-17, 27-37; Gov.Br.19-28. Yet in their meander through history, they neglect to examine whether the purported common law principles they propound applied to seats in parliamentary or legislative bodies. Had they done so, they would have run headlong into a bedrock principle: "The jurisdiction of the Houses over their own members, their right to impose discipline within their walls, is absolute and exclusive." *Bradlaugh v. Gossett* (1884), 12 Q.B. 271, 275 (U.K.) (Lord Coleridge, C.J.).

Indeed, those sources firmly establish that quo warranto has never been available against legislators:

> When, under the constitution of a state, the power to determine the elections, returns and qualifications of members of the legislature is vested exclusively in each house as to its own members, the courts are powerless to entertain jurisdiction in quo warranto to determine the title of a member of the legislature.

James L. High, *A Treatise on Extraordinary Legal Remedies, Embracing Mandamus, Quo Warranto and Prohibition,* §646(a), at 602 (3d ed. 1894) (citing *State ex rel. Att'y Gen. v. Tomlinson*, 20 Kan. 692, 702 (Kan. 1878) ("We are powerless to enforce any judgment of ouster against a member of the legislature."); *see also*, *Tomlinson*, 20 Kan. at 704 ("We are not cited to a single case in the federal or state courts, where any member of congress, or any member of a state legislature, from the foundation of the government to the present time, has been ousted by quo warranto.").

Similar early American cases abound. For example, the Delaware Supreme Court wrote:

> When a question involving an implied resignation of one office (it not being that of a member of a legislature), by the acceptance of another office, is presented to the courts for decision, the courts have jurisdiction . . . . But, when the first office is that of a representative or senator in the General Assembly . . . the Courts, ordinarily constituted, may not proceed to hear and adjudicate, for they are not the tribunals provided by the Constitution for the determination of such question. . . .
>
> The only possible question on such a subject is, as to the body, in which such a power shall be lodged. If lodged in any other, than the legislative body itself, its independence, its purity, and even its existence and action may be destroyed, or put into imminent

> danger. No other body, but itself, can have the same motives to preserve and perpetuate these attributes; no other body can be so perpetually watchful to guard its own rights and privileges from infringement, to purify and vindicate its own character, and to preserve the rights, and sustain the free choice of its constituents. Accordingly, the power has always been lodged in the legislative body by the uniform practice of England and America."

*State ex rel. Biggs v. Corley*, 172 A. 415, 420 (Del. 1934) (en banc) (quoting 1 Joseph Story, *Commentaries on the Constitution of the United States* §833 (2d ed. 1851). And in New Hampshire:

> By Article XXXV of the constitution, the senate are made "final judges of the elections, returns, and qualifications of their own members, as pointed out in this constitution." We are of opinion that from the action of the senate in this respect there can be no appeal. By the express terms of the constitution, the action of the senate is made ***final***. If the framers of our organic law had intended that some court or other tribunal should have the power, by writ of ***quo warranto*** or ***mandamus***, or other process, to reverse the action of the senate, they would have so expressed themselves, in language which could not be misunderstood.

*In re Op. of the Justs.*, 56 N.H. 570, 573 (N.H. 1875) (emphasis in orig.); *accord, e.g.*, *Covington v. Buffett*, 45 A. 204, 205 (Md. 1900) ("[The Maryland Constitution] provides that 'each house shall be judge of the qualifications and elections of its members,' and we are all of the opinion that until that tribunal, which is intrusted with the exclusive authority, decides whether a vacancy exists, the courts are without jurisdiction to interfere."); *State ex rel. Ford v. Cutts*, 163 P. 470, 470 (Mont. 1917) (per curiam) ("Each House is the judge of the ultimate

right of persons claiming seats as members thereof, and its decision, right or wrong, is conclusive upon us. Being powerless to enforce any judgment of ouster against a person recognized by either House as a member thereof, the utmost we could do would be to decide an abstract question of law; the courts of this state are not instituted for that purpose."); *Rainey v. Taylor*, 143 S.E. 383, 383 (Ga. 1928) (same); *Alexander v. Pharr*, 103 S.E. 8, 8 (N.C. 1920) (per curiam) (same).

Given Parliament's exclusive authority in this arena—which was carried into provisions such as Article III, Sections 8, 10, and 11 of the Texas Constitution—it is perhaps unsurprising that there seems to have been no serious attempt in a British or commonwealth jurisdiction to pursue quo warranto against a member of Parliament or legislative assembly until the case of *R. ex rel. Tolfree v. Clark*, [1943] O.R. 501 (Can. Ont. C.A.), in 1943. When that attempt was made, it was decisively rejected. *Id.* at 501 ("Membership in a Legislative Assembly is not an 'office or franchise,' the right to which can be tested in quo warranto proceedings."). As Justice Henderson observed of the attempted quo warranto proceedings:

> So far as the authorities cited to us go, and they were very exhaustive, no case has ever occurred in which it has been held that a member of Parliament or of a Legislative Assembly in the British Empire holds an office or franchise, and in my opinion he does not, and I am therefore of opinion that these proceedings do not lie against the Respondents.

*Id.* at 513. Justice Laidlaw further explained that a quo warranto could not lie because:

> A member of the Legislative Assembly holds a "seat," and may be appointed to some office in the body. He is a representative of the people, and a delegate elected by the majority of voters. But his position is not such as arises by virtue of charter or Act of Parliament [as necessary for quo warranto].

*Id.* at 521-22. And the other Justices unanimously concurred. *See id.* at 513 (Gallanders, J.A., concurring) ("I agree that proceedings in the nature of quo warranto cannot be successfully utilized here."); *id.* at 510 (Fisher, J.A., concurring) ("[The lower court] was right in striking out the notice of motion in the nature of quo warranto, on the grounds that it was frivolous and vexatious and that it disclosed no reasonable cause of action); *id.* (Riddell, J.A., concurring) ("The propriety of quo warranto proceedings being resorted to in such a case was raised and carefully argued . . . I agree with [Justice Laidlaw's] reasoning and conclusion.").

The Governor cites one source to claim that "English treatises approved the writ's use to test 'members of parliament.'" Gov.Br.23 (citing 4 WILLIAM HAWKINS, PLEAS OF THE CROWN at 99 (7th ed. 1795). However, that passage stands for no such proposition. The Governor omits the full phrase and citations provided by Hawkins. Hawkins states that a writ of quo warranto can only lie

under "particularly and extraordinary circumstances" when the franchise at issue in "no ways concerns the public." 4 HAWKINS at 99. In a parenthetical, he then writes that the franchise relating to the "*election* of the members of the Parliament" is of public concern. *Id.* (emphasis added). The Governor omits the words "election of," but a full reading makes clear that Hawkins was referring to the franchise of the ***electors*** in a borough who could vote for members of parliament, not to the members of parliament themselves. In other words, akin to a modern election contest where the qualifications of voters might be challenged.

First, Hawkins cites the case *Rex v. Harvey*, as reported in John Strange, I REPORTS OF CASES IN THE COURTS OF CHANCERY, King's Bench, Common Pleas and Exchequer 547 (London 1755). In that case, an information in quo warranto was presented against "inhabitants of the borough" to inquire by what right they had "vot[ed] for Parliament men at the last election." *Harvey*, I Stra. 547. Not only did this deal with votes by electors, not a challenge to the "Parliament men" themselves, but the case actually undermines Relators' position. The court concluded that because "the only act alleged was their voting for Parliament men," any challenge to the elector's votes "is more properly determinable in the House of Commons." *Id.*; *see also id.* at margin note ("The

Court will not grant information where the only acting is voting for Parliament."). Notably, this finds parallel in the Texas Election Code, where the Legislature has given itself exclusive jurisdiction to consider election contests for the legislative offices. *See* TEX. ELEC. CODE §221.002(c)-(d).

Second, Hawkins cites to *King v. Davies*. 4 HAWKINS at 99, n.(c) (citing 2 SYLVESTER DOUGLAS, REPORTS OF CASES ARGUED AND DETERMINED IN THE COURT OF KING'S BENCH 588 (1783). There it was alleged that corporate officers of a borough, "corporators," had improperly disenfranchised other electors in the borough. Douglas, KING'S BENCH at 588-59. The court did not actually permit the quo warranto to proceed (holding that it was inappropriate to try a novel question of criminal law in the posture of a writ for quo warranto), but more to the point, the information again was not presented against members of Parliament, but rather against those who claimed to hold a local office (corporators of a borough—described in the margin notes as "magistrates of a borough") that permitted them to vote for, *inter alia*, members of Parliament. *Id.* at 588-90. In sum, Relators have not provided ***a single authority*** to suggest quo warranto could lie against a member of Parliament or a legislative assembly at common law; rather, their authorities support the opposite conclusion.

The Governor also cites one post-colonial Pennsylvania case and two "more recent cases," one from Alabama and another from Pennsylvania. Gov.Br.24. Neither of the Pennsylvania cases deal with applying quo warranto to members of the Legislature. The more recent, *Commonwealth v. Peoples*, 28 A.2d 792 (Pa. 1942), which the Governor ambitiously represents as relating to the "ouster of local legislative officials," dealt with city council members, and the court nowhere discussed or implied anything about members of a state legislature.

The earlier case dealt with a public-school teacher. *Commonwealth v. Frank*, 4 Pa.C.C. 618 (Pa. Com. Pl.—Perry Cnty. 1888). There, the court passingly cites a phrase from High's *Extraordinary Legal Remedies*, where High writes that an office subject to quo warranto is one in "which a portion of the sovereignty of the country, either legislative, executive, or judicial, attaches." *Id.* at 621 (quoting High, *supra*, §625). However, reading the source in full context actually cuts against the Governor. First, as noted above, High goes on to write in this very same treatise that "***courts are powerless to entertain jurisdiction in quo warranto to determine the title of a member of the legislature.***" High, *supra*, §646(a) (emphasis added).

But even just looking at the language referenced, the full passage makes clear that High's reference to an office in "which a portion" of the sovereign legislative power attaches, meant an office created by Parliament or the Legislature which thus exercises some partially delegated authority of that body as a whole. High spends the next three pages discussing how, although "doubts were at one time entertained as to whether the jurisdiction [for quo warranto] could be exercised for any office not derived immediately from the crown, by charter or express grant," it was now well established that quo warranto could also lie against an office created "by act of parliament," *id.* at pp. 582-84, n.3: in other words, an office that exercises "a portion" of the legislative power.

Relators fundamentally misconceive the nature of a legislative body. As the United States Supreme Court has explained about a bicameral legislature:

> The two houses of congress are legislative bodies representing larger constituencies. Power is not vested in any one individual, but in the aggregate of the members who compose the body, and its action is not the action of any separate member or number of members, but the action of the body as a whole.

*United States v. Ballin*, 144 U.S. 1, 7 (1892). Similarly, in *Tolfree v. Clark*, Justice Laidlaw distinguished between "seats" in the body that constitutes the legislative power of the sovereign and offices that "arises by virtue of charter or Act of Parliament." *Tolfree*, [1943] O.R. at 521. The entire legislative power is

vested in the houses of the Legislature, and they, acting as bodies, exercise that power. So, while individual legislators may be said in some sense to hold an elected office, they do not exercise individual franchises that have any power outside of their membership in the body, and thus no franchise that can be tried by quo warranto at common law.

In the Alabama case the Governor cites—notably the only case from either brief (tracing the entire history of quo warranto in England and the United States) that actually deals with a member of a legislative body—the question was not whether quo warranto could lie against a legislator based on common law principles. *See State ex rel. Siegelman v. Reed*, 536 So. 2d 949 (Ala. 1988) (per curiam). As an initial matter, the Alabama Court was not squarely presented with the question of whether the quo warranto could properly lie against a member of the legislature at all, and thus did not address that issue. *Cf. In re Op. of the Justs.*, 254 Ala. 160, 162 (Ala. 1950) ("The Constitutions of most, if not all, of the states contain provisions similar to those quoted above from Section 51 of the Constitution of this state. And it is well settled that such a provision vests the legislature with sole and exclusive power in this regard, and deprives the courts of jurisdiction of those matters."). The only question presented was what the effective date of ouster was under a statute passed by the Alabama Legislature,

and the Court held the case was moot as, by either measure, that date had passed. *Reed*, 536 So. 2d at 951.

The Texas Legislature has not provided *by statute* for a judicial proceeding in the nature of quo warranto against a member of the legislature for quorum breaking, and Relators do not argue otherwise. Rather, the Texas House has seen fit to internally provide, through its House Rules Manual, for a variety of options "to impose discipline within their walls" on members who are absent without excuse for the purpose of quorum breaking and otherwise. *Bradlaugh*, 12 Q.B. at 275 (U.K.). Of those penalties, expulsion is only one option. TEX. HOUSE OF REPRESENTATIVES, HOUSE RULES MANUAL, Rule 5, § 3, 89th Leg., Reg. Sess. (2025). And notably, this 89th Legislature has shown that it is actively exercising its prerogative under the Rules and choosing how and whether to punish quorum breaking members. *See* Resp.QWR.61, 63. Intruding on the exclusively legislative prerogative of each house to judge its own members when the House at issue has literally just exercised that prerogative would be an unprecedented intrusion by a co-sovereign branch of government.

Given they have no colorable statutory grounds, Relators rely on a supposed common law doctrine of forfeiture by "nonuser" rather than attempting to argue that the Texas Legislature has abrogated its own prerogative.

*See, e.g.* State.Br.10 ("Under the common law, the undisputed facts warrant this Court declaring the Legislators' offices vacant."). However, since quo warranto could not lie against a member of the legislature under common law, their argument fails at the outset. Relators may genuinely think that quorum breaking for two weeks to oppose a bill that the Legislators believe dilutes the voting strength of millions of Texans is equivalent to committing grave "sins" that frustrate the "rights of citizens to participate in government." But even "[i]f injustice has been done, it is injustice for which the Courts of law afford no remedy." *Bradlaugh*, 12 Q.B. at 277 (U.K.).

### 2. The Court has no original jurisdiction to issue quo warranto against a member of the legislature.

Article V, section 3(a) provides that "[t]he Legislature may confer original jurisdiction to the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State." TEX. CONST. art. V, §3(a). Relator would have the Court infer that this provision grants the Court the power to expel a member of the House; however, that power has been textually committed to another branch. *See* TEX. CONST. art III, §11 ("Each House may determine the rules of its own proceedings, punish members for disorderly conduct, and, with the consent of two-thirds, expel a member, but not a second time for the same offence.").

Even if a statute could grant this court jurisdiction, none does. Petitioner argues that the Court may issue writs of quo warranto "agreeable to the principles of law regulating those writs" against various enumerated judicial officers "or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals." TEX. GOV'T CODE §22.002(a). But this Court has "construed this phrase ["officer of the state"] to refer, not to every State official at every level, but only to chief administrative officers—the heads of State departments and agencies who are charged with the general administration of State affairs." *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 776 (Tex. 1999) (orig. proceeding); *see also Betts v. Johnson*, 73 S.W. 4, 4-5 (Tex. 1903).

Section 22.002(a) refers to a "small circle" of department heads. *Nolo Press*, 991 S.W.2d at 776. A legislator falls outside this "small circle"; he is not a head of a department or "charged with the general administration of State affairs." *Id.*; *see also Diffie v. Cowan*, 56 S.W.2d 1097, 1101 (Tex. App.—Texarkana 1932, no writ) ("It has long been held and accepted as settled law that a legislator is not a 'civil officer,' the speaker of a legislative assembly is not a 'state officer,' the members of state Legislatures are not 'officers of the state.'"). Rather, each Respondent stands as one vote among many atop a coequal branch

of government. In that way, each is similar to a board member, who this Court has held is not an "officer of state government" covered by §22.002(a). *See, e.g.*, *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 684 (Tex. 1995) (Hecht, J. dissenting) ("We held long ago that 'any officer of state government' does not include a board of officers") (citing *Betts*, 73 S.W. at 4).

The cases cited by Relators do not counsel otherwise. For instance, in *Pickle v. McCall*, *see* Gov.Br.21, the Court stated that "[s]ome question may arise as to what officers are embraced in the words 'officer of the state government;' but there can be no doubt that the comptroller of public accounts is a state officer, for he is an officer in one of the department of the executive branch of the state government, whose duties extend to the transaction of the business of that department throughout the entire state." 86 Tex. 212, 219 (1893). Not so here where each Legislator must participate as a part of a larger whole and does not by him or herself transact business of the legislative department throughout the entire state.

Because legislators are not "state officers" under §22.002(a), this Court has no jurisdiction to entertain the Governor's petition. Moreover, because issuance of a writ of quo warranto against a legislator who has broken quorum would violate the separation of powers, it would likewise not be "agreeable to

the principles of law," TEX. GOV'T CODE §22.002(a), for the Court to grant the relief the Governor seeks.

### C. Legislative immunity protects the Legislators from suit and liability.

#### 1. Legislative immunity shields legislators for performing legislative functions.

Actions taken in a legislative capacity are protected by legislative immunity.[5] *In re Perry*, 60 S.W.3d 857, 859 (Tex. 2001); *Joe*, 145 S.W.3d at 157 (legislative immunity applies to legislators at all levels of government so long as they are performing legislative functions). The legislative immunity doctrine derives primarily from the Speech and Debate Clauses of the Texas and federal constitutions. *Perry*, 60 S.W.3d at 859; U.S. CONST. art. I, §6; TEX. CONST. art. III, §21. It "is not intended to protect individual legislators, but instead serves the public's interests." *Perry*, 60 S.W.3d at 859. Even the "threat of liability can create perverse incentives that operate to inhibit officials in the proper performance of their duties." *Forrester v. White*, 484 U.S. 219, 223 (1988) (emphasis in original). Legislators are frequently expected to make "imaginative" decisions that "will often have adverse effects on other persons."

[5] "[T]he doctrine generally shields legislative actors not only from liability, but also from being required to testify about their legislative activities." *In re Perry*, 60 S.W.3d 857, 860 (Tex. 2001).

*Id.* Without legislative immunity, legislators "may well be induced to act with an excess of caution or otherwise to skew their decisions in ways that result in less than full fidelity to the objective and independent criteria that ought to guide their conduct." *Id.*

The Governor's contention that anyone may seek quo warranto, Gov.Pet.Reply.2-5, squarely conflicts with these principles. If the Governor is correct—which the Legislators vigorously dispute—innumerable private citizens will have a procedural mechanism to seek judicial ouster of elected officials for any grievance they believe is a dereliction of duty. Without the application of legislative immunity to protect legislators' discretionary decision-making, the floodgates would open to suits in district courts or this Court (which, if the Governor prevails on his assertion of exclusive original jurisdiction, the Court would have no choice but to entertain). Such a result weakens legislative immunity. *See Dombrowski v. Eastland*, 387 U.S. 82, 84-85 (1967) (noting that legislators "should be protected not only from the consequences of litigation's results but also from the burden of defending themselves").

### 2. Opposing legislation is a legislative function, as is quorum-breaking for policy reasons.

Whether the function the actor performs is legislative depends upon the nature of the act. *Perry*, 60 S.W.3d at 860; *Bogan v. Scott-Harris*, 523 U.S. 44, 54

(1998). Activities deemed to be legislative in nature are not explicitly enumerated; rather, an action is legislative "when it reflects a discretionary, policymaking decision of general application, rather than an individualized decision based upon particular facts." *Perry*, 60 S.W.3d at 860. Voting, axiomatically, is legislative activity. *Joe*, 145 S.W.3d at 154; *see also Bogan*, 523 U.S. at 55 (referring to act of voting as "quintessentially legislative"). But lawmakers' legislative functions extend far beyond casting a vote. "[I]nvolvement with [a legislator's] constituents regarding a pending issue" is a legislative function. *Joe*, 145 S.W.3d at 158. Discussion of legislation and persuasion of colleagues regarding such ordinances are legislative functions. *Id.* Legislators are immune from liability for conflicts "arising from [their] support of, preparation for, and vote" on legislation. *Id.* at 154. And activity opposing legislation is, of course, as protected as activity supporting measures—such decision-making reflects legislators' discretion concerning generally applied policymaking. *See, e.g., id.* at 158 (legislator's "leadership role in supporting the moratorium and opposing apartment construction constituted legitimate legislative functions").

This Court has recognized that legislators sometimes break quorum—including by leaving the state—to further their opposition to legislation. When

considering a dispute where representatives broke quorum and traveled to the District of Columbia, this Court observed:

> Although the Governor certainly seeks to advance legislation he favors, the majority of the members of the Legislature support the same legislation. Relator House members oppose that legislation and have broken quorum to further their opposition.

*Turner*, 627 S.W.3d at 660. That is precisely what occurred here—the Legislators broke quorum for two weeks, expressly in opposition to a proposed redistricting measure. Resp.QWR.4, 8, 12, 16, 20, 23, 27-28, 33, 42, 49, 52, 56, 59. They also never stopped doing their jobs, no matter where they were. *See* Resp.QWR.Tabs 1-13 (legislative activities included daily correspondence with staff regarding constituent matters, planning for town halls, daily discussions with colleagues regarding the impact of redistricting litigation and the ongoing House proceedings, press releases to constituents, and meetings with local constituent groups to keep the public informed about the redistricting measure). The Legislators' activities in opposition are legislative functions. *See Joe*, 145 S.W.3d at 158.

The Constitution authorizes both quorum-breaking and quorum-forcing as interest-balancing tools. *See Abbott*, 628 S.W.3d at 292 ("Just as article III, section 10 enables 'quorum-breaking' by a minority faction of the legislature, it likewise authorizes 'quorum-forcing' by the remaining members."). Legislative

immunity attaches to the constitutionally contemplated quorum-breaking where, as here, it was done for policy reasons in furtherance of specific legislative opposition. *See Joe*, 145 S.W.3d at 158 (no liability for claims arising from legislator's actions in support of or opposition to proposed measures).

The same reasoning extends to quorum-breaking performed by leaving the state—it was, itself, done in furtherance of the Representatives' opposition of the redistricting legislation at issue. Resp.QWR.4, 8, 12, 16, 20, 23, 27-28, 33, 42, 49, 52, 56, 59; *see Abbott*, 628 S.W.3d at 294 (noting quorum-breaking representatives "assumed, as did previous generations of quorum-breaking legislators, that a successful break of quorum required their absence from the state"); *see also* State.Br.3-5 (agreeing the quorum-breaking was directly due to strong opposition to the redistricting legislation set to be passed at the special session).

The State's disapproval of lawmakers' method of opposition does not strip that opposition of its legislative character. Review of the Representatives' behavior is for the Legislature and the voters. The Representatives are immune from suit and liability for their legislative actions.

### 3. Delaying a vote does not render an action non-legislative.

It makes no difference that the Legislators' methods delayed consideration of the redistricting bill. *See* State.Br.48 (arguing the Representatives rendered the House unable to conduct business for the two weeks of quorum-breaking). Legislative immunity is determined by examining the action itself. *See Perry*, 60 S.W.3d at 860 (legislative function turns on "the nature of the act"). Curtailing legislators' immunity based on the practical political results of their methods would run entirely afoul of the doctrine's operation. *See Forrester*, 484 U.S. at 223 (legislative immunity is required specifically because governing officials' "imaginative" decisions "will often have adverse effects on other persons").

The State argues that the Legislators' methods were improper because they "impair[ed] the power and operation of the Legislature" and "[p]revent[ed] the House from conducting business." State.Br.38-39. But legislators regularly delay operations and temporarily stall House business as part of political advocacy on important legislative issues. *See, e.g., Local 28 of the Sheet Metal Workers' Int'l Ass'n v. E.E.O.C.*, 478 U.S. 421, 460 (1986) (recounting legislative history of Title VII, including 83 days of debate, including a two-month filibuster, and amendments prompted by need to resolve gridlock).

If legislators are deprived of immunity for activities that impair legislative operations, they could be subject to suit or liability—including judicial removal, if the State's argument prevails—for any attempt to delay or block votes, even if such attempts are aimed to encourage compromise that would benefit constituents. Such results would upset the "careful balance between the right of a legislative minority to resist legislation and the prerogative of the majority to conduct business," *Abbott*, 628 S.W.3d at 292, and underscore the importance of protecting legislators' discretionary decisions from invasive scrutiny by other branches.

The State—improperly—asks this Court to declare as a matter of law that the method by which the Legislators chose to oppose controversial redistricting legislation for a few weeks resulted in abandonment of their duties and of their elected seats. State.Br.45. A request to have this Court interrogate and then penalize a legislator's opposition contradicts longstanding principles of legislative immunity. If the Court decides the dispute is justiciable, it should hold that legislative immunity bars the relief Relators request.

### D. A writ of quo warranto in response to a legislative quorum break would violate the constitutionally-prescribed term of office and qualifications of representatives.

A writ of quo warranto declaring Respondent's office vacant because of his participation in a quorum break would violate Article III, Sections 4 and 7 of the Constitution. Article III, Section 4 provides that representatives "***shall*** be chosen by the qualified voters for the term of two years." TEX. CONST. art. III, §4 (emphasis added). Section 7 identifies the qualifications necessary for a representative to hold office: (1) United States citizenship, (2) being a qualified voter of the State at the time of election, (3) residing in the State for two years and in the district for one year prior to election, and (4) being twenty-one years of age. TEX. CONST. art. III, §7.

The Court cannot usurp the Legislators' two-year term of office or add abstention from quorum breaking to the list of qualifications to hold office as a state representative. The Legislators have not died or been expelled from the House by the constitutionally prescribed means: a 2/3 vote of the House. Their presence in another state is not a voluntary resignation. *See infra*, Part I.C.1. The Legislators are entitled to serve through the entire term to which they were elected.

Proceeding against a member of a co-equal branch of government in this way also undermines Texas Constitutional mandates related to the term of office by a representative. Specifically, the Texas Constitution instructs that House members "***shall*** be chosen by the qualified voters for the term of two years," "***shall*** take office following their election," and "***shall*** serve thereafter for the full term of years to which elected." TEX. CONST. art. III, §4 (emphasis added). Here, the State seeks to cut off that full term in office based on conclusory factual statements and weak legal authority. The Texas Constitution cannot be so easily undermined.

## III. The Governor's bribery allegations against Representative Wu fail.

The Governor, but not the Attorney General, brings allegations of bribery against Representative Wu. To reach these allegations, the Court must first consider the Governor's standing.

### A. The Governor has no standing.

To start, the Governor lacks standing to maintain his action. On this point, the Legislators agree with the Attorney General that, according to this Court's established precedents, quo warranto is "exclusive and can only be brought by the attorney general, a county attorney, or a district attorney." *Annunciation House,* 2025 WL 1536224, at *7; State.Pet.4 (citing *In re Dall. Cnty.*, 697 S.W.3d 142, 152 (Tex. 2024) (orig. proceeding)); *accord Staples v. State ex rel. King*, 245

S.W. 639, 642 (Tex. 1922) ("[T]he powers thus conferred by the Constitution upon these officials are exclusive.").

While the State is correct that the Governor lacks standing, it incorrectly asserts that "it is unnecessary for this Court to address whether the Governor has the independent authority to petition for a writ of quo warranto." State.Br.17-18. Of course, in a multi-party case, the existence of one plaintiff with standing suffices to confer jurisdiction. *Id.* (citing cases). But here, the Attorney General and the Governor are not multiple parties in the same case, but rather separate Relators in separate matters that have been consolidated for briefing purposes. Gov.Br.19 n.1. Moreover, the Governor seeks a distinct remedy — as he puts it, "a different form of relief that is in no way mooted by some Democrats' recent return." *Id.* Most notably is the Governor's seemingly novel argument that this Court has the authority to utterly disregard the procedures and protections of the criminal justice system, unilaterally determine a lawmakers' guilt of bribery and, as punishment, revoke their office. Gov.Br.54 (citing cases from states other than Texas where officials have been removed from office ***following criminal convictions***). This position has no legal merit, *see infra*, Part III.B., but the Governor also has no standing to advance it.

While the Governor invokes common law related to private parties, *see* Gov.Br.24-25,[6] the Texas Constitution simply does not vest him with authority to prosecute this action in his official capacity, which he is explicitly attempting to do here. *State ex rel. City of Colleyville v. City of Hurst*, 519 S.W.2d 698, 700 (Tex. App.—Fort Worth 1975, writ refused n.r.e.). Article IV, §22 and Article V, §21 of the Texas Constitution vest the authority to represent the State in such suits in the Attorney General and county and district attorneys. So, "it is not the Governor but the Attorney General, a distinct and separately elected officer, who has authority to initiate and conduct enforcement actions on the State's behalf." *State v. Volkswagen Aktiengesellschaft*, 692 S.W.3d 467, 473 (Tex. 2022) (per curiam) (citing TEX. CONST. art. IV, §§1, 2, 22; *Abbott*, 645 S.W.3d at 283-84.

The Governor's best response is to argue that, as the State's CEO, he has authority to "direct litigation on behalf of the State," but the case he cites for that proposition does not actually support it. Instead, Justice Young wrote in a concurrence that "we have suggested that where the attorney general lacks

[6] The English "Statue of Anne" was what "empowered the court to grant leave to a private person to file an information in the nature of a quo warranto." *Banton v. Wilson*, 4 Tex. 400, 406-07 (Tex. 1849). But that common law right for private persons was to have "such an information to be filed by the master of the crown office, on application by any subject." *Id.* Private actors thus still had to act to file an information through a proper state actor capable of "prosecut[ing] the information." *Judicial Discretion in the Filing of Informations*, 36 Harv. L. Rev. 204, 205 (Dec., 1922).

constitutional or statutory authority to institute a suit, the governor, as the State's chief executive officer, may have the power to require the attorney general to institute, or to cause to be instituted, a suit of such character, when in the governor's judgment the welfare of the state required it." *Am. Oversight*, 716 S.W.3d at 558-59 (Young, J., concurring) (cleaned up; quoting *Day Land & Cattle Co. v. State*, 4 S.W. 865, 867 (1887)). Here, of course, the Attorney General not only has exclusive constitutional and statutory authority to bring quo warranto actions—he has in fact brought a quo warranto "suit of such character" as the Governor seeks to simultaneously maintain. Therefore, and as the *Day Land & Cattle Co.* Court went on to explain, "in a government in which the duties of all officers, as well as their powers, are defined by written law, no power ought to be exercised for which warrant is not there found." 4 S.W. at 867.

The Governor goes on to claim that, as part of his constitutional duty to cause laws to be faithfully executed, he must "exercise the residuary of executive power vested in the Executive Department but not expressly lodged with other executive officers," and that those left-over powers "surely" include the right to bring this quo warranto action. Gov.Br.29-30. But his authority for this dubious proposition is: (a) federal case about the wholly different removal powers of the U.S. President, *see Collins v. Yellen*, 594 U.S. 220, 250-56 (2021);

and (b) a case that speaks to the completely different topic of the Governor's authority during a declared disaster, *see Abbott v. Harris Cnty.*, 672 S.W.3d 1, 18 (Tex. 2023). In fact, the governor of Texas "enjoys comparatively less authority" than the U.S. President. *Am. Oversight*, 716 S.W.3d at 559 (Tex. 2025) (cleaned up) (Young, J., concurring). And while "[t]he absence of that absolute power of the chief executive in this state must occasionally produce a want of harmony in the executive administration," the Governor's resulting frustration does not permit him to leapfrog the Attorney General. *Hous. Tap & Brazoria Ry. Co. v. Randolph*, 24 Tex. 317, 343 (1859). On the contrary, "that there is no remedy for an injury growing out of such conflict, cannot justify another department, to wit, the judiciary, in overstepping the boundary of its prescribed authority, for the purpose of furnishing a remedy." *Id.* at 343-44. Lacking standing, this Court has no jurisdiction to fashion the remedy requested by the Governor.

### B. Bribery also turns on disputed fact issues.

Even setting aside all of the general jurisdictional issues barring the Governor's petition, his conclusory allegations as to bribery would not be appropriate for this Court's exercise of original jurisdiction.

The bribery provision of the Constitution and its sister penal code provision provide no end run around the need for factual development in the present case. The Governor acknowledges that it "is up to district attorneys to prosecute criminal bribery allegations." Gov.Br.54. But with the same breath, he suggests this Court should determine whether forfeiture of an office has occurred under the [bribery provision] of the Texas Constitution and the penal code, without need for an actual bribery conviction and, apparently, without the need for ***evidence*** to support a bribery finding in this civil lawsuit. *Id*. at 54-55.

The cases cited by the Governor do not support this notion. Instead, they support the opposite conclusion—a bribery conviction must be had before utilizing quo warranto against a legislator. For instance, the Ohio Supreme Court, in *State ex rel. Corrigan v. Masten*, found that the quo warranto action there was appropriate because the State "proved respondent's ***convictions*** [for bribery] by submitting a copy of the judgment entered." 538 N.E.2d 372, 372 (Ohio 1989) (per curiam) (emphasis added). Similarly, in *Summerour v. Cartrett*, the Court allowed a quo warranto proceeding after a conviction of certain crimes. 136 S.E.2d 724, 725-26 (Ga. 1964).

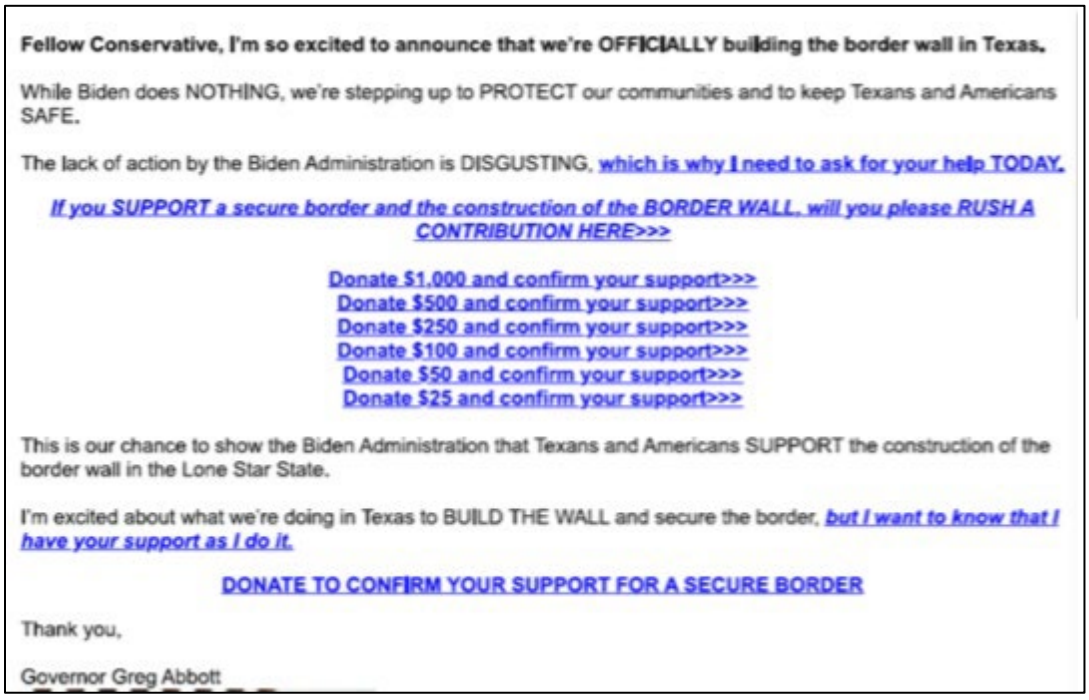
Additionally, the "evidence" the Governor cites in support of his bribery claim does not demonstrate bribery has occurred. The elements of bribery are:

(1) a person, (2) intentionally or knowingly, (3) accepts, or agrees to accept from another, (4) any benefit, (5) as consideration for a violation of a duty imposed by law, (6) on a public servant or party official. TEX. PENAL CODE §36.02(a)(3). The Governor makes conclusory allegations and cites hearsay within news articles, videos and social media posts to support his bribery claim. Gov.Br.7-9. Even setting aside that these are allegations, not competent evidence, they fail to make out a case for bribery.

No facts establish that Representative Wu engaged in a quid pro quo arrangement. *See McCallum v. State*, 686 S.W.2d 132, 136 (Tex. Crim. App. 1985) (en banc) (holding that bribery "requir[es] a bilateral arrangement."); *see also McDonnell v. United States*, 579 U.S. 550, 567 (2016). The social media posts by Representative Wu in no way indicate an offer to make an exchange of action for consideration. On the contrary, the messages promote a third-party organization, not Representative Wu, and do not indicate any support is in exchange for his decision making. Representative Wu vigorously disputes any allegations of bribery.

As a more general matter, of course, it is commonplace for elected officials to tie appeals for political contributions to specific policy actions they intend to or have taken. For example, the Governor sent the following fundraising appeal

to his supporters requesting "help" in the form of monetary donations for his border-wall construction:



**Fellow Conservative, I'm so excited to announce that we're OFFICIALLY building the border wall in Texas.**

While Biden does NOTHING, we're stepping up to PROTECT our communities and to keep Texans and Americans SAFE.

The lack of action by the Biden Administration is DISGUSTING, **which is why I need to ask for your help TODAY.**

***If you SUPPORT a secure border and the construction of the BORDER WALL, will you please RUSH A CONTRIBUTION HERE>>>***

**Donate $1,000 and confirm your support>>>**
**Donate $500 and confirm your support>>>**
**Donate $250 and confirm your support>>>**
**Donate $100 and confirm your support>>>**
**Donate $50 and confirm your support>>>**
**Donate $25 and confirm your support>>>**

This is our chance to show the Biden Administration that Texans and Americans SUPPORT the construction of the border wall in the Lone Star State.

I'm excited about what we're doing in Texas to BUILD THE WALL and secure the border, ***but I want to know that I have your support as I do it.***

**DONATE TO CONFIRM YOUR SUPPORT FOR A SECURE BORDER**

Thank you,

Governor Greg Abbott

As the Penal Code recognizes, such contributions and appeals are not bribery because they do not involve a quid pro quo exchange. *See* TEX. PENAL CODE §36.02(4) (requiring that "the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion if such exercise of official discretion would not have been taken or withheld but for the benefit.")

Because the Governor's arguments rely on disputed factual allegations—which cannot be called facts because no competent evidence has been submitted—this Court should proceed no further. The cases cited by the

Governor support Representative Wu's argument that this Court is an improper forum. In *Honey*, the district court held a trial to determine which party had a right to the office. 39 Tex. at 2-3. The same occurred in *Steingruber*, and the appellate court affirmed based on the trial court's adjudication of a fact issue—intent. 220 S.W. at 77-78. *Hardberger* provides the counter-example but only because the issue involved simply a matter of statutory construction. This Court took jurisdiction over the writ only because relief did not turn on a disputed fact issue. *Hardberger*, 932 S.W.2d at 490.

### C. Representative Wu has a right to jury trial.

As explained *supra*, Part I.C.2, if the jurisdictional problems are overlooked, Representative Wu would have a right to jury trial on the Governor's bribery allegations and expressly so demands.

## CONCLUSION

Respondent respectfully requests that the Court deny leave to file the quo-warranto information or, alternatively, deny the petition in quo warranto.

Respectfully submitted,

*/s/ Chad W. Dunn*

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## CERTIFICATE OF COMPLIANCE

I certify that this response complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(e) because, per Microsoft Word, this document contains 14,160 words, excluding the portions of the document exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

This reply also complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a proportionally spaced typeface in 14-point font.

*/s/ Amy Warr*
Amy Warr

## RULE 52.3(J) CERTIFICATION

I certify that I have reviewed the factual statements contained in this Brief and have concluded that every factual statement in the Brief is supported by competent evidence included in the Record.

*/s/ Amy Warr*
Amy Warr

## CERTIFICATE OF SERVICE

I certify that on this 29th day of August, 2025, this Response to Emergency Petition for Writ of Quo Warranto was served via electronic service through eFile.TXCourts.gov on all parties through their counsel of record, listed below:

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/s/*Amy Warr*
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