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SUPREME COURT OF TEXAS
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No. 25-0674

In the Supreme Court of Texas

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

On Petition for Writ of Quo Warranto

RELATOR'S REPLY BRIEF ON THE MERITS IN CASE NO. 25-0674

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INTRODUCTION

As expected, Gene Wu asks this Court to allow him to keep what he stole. He may have fled the State for the purpose of "killing" an entire legislative session at the bidding of groups who bribed him to start an inter-state political arms race. And he may have succeeded—scuttling an entire session, hamstringing his colleagues' work in session, and wasting more than $1 million of taxpayer funds.

But that was then, and this is now. The Court should let bygones be, he says, and blind itself to public facts. Wu was only "promot[ing] a third-party organization" when he asked folks to "[s]upport Texas House Democrats as *we* deny quorum" and sought to "fund *our* efforts" while "in Chicago." QR.00412; QR.00086; Resp.BOM.76. And he may have boasted that he was willing to "be out for weeks, if not months, to [break quorum]" to arrest both chambers indefinitely. QR.00091, at 01:54; Gov.BOM.4–15. But that was just tough talk. Really?

Amidst all that double speak, there is one thing Wu does *not* say—that he will not ever do this again. Even now, he claims (at 28) the "power" to break quorum in the future with this Court's blessing. "[I]f injustice has been done," he says (at 59), the people just have to take it.

Thankfully, that is wrong. The writ of quo warranto exists precisely to ensure that the public will not suffer prolonged injustice at the hands of abdicant officers. Only this Court may wield that tool, and it must do so now to prevent "a fatal stab at" the heart of republican government.

ARGUMENT

I. The Governor May Pursue a Writ of Quo Warranto to Remove Representative Wu in this Original Action.

Quo warranto developed to provide the public a "speedy" solution for individuals like Wu, who abused and abandoned public office. *Delgado v. Chavez*, 140 U.S. 586, 590 (1891). Indeed, the writ's animating purpose was to obviate the need "to bring to a trial" an officeholder's entitlement to his office and thus prevent the public from suffering "divers acts prejudicial to the good order." 4 WILLIAM HAWKINS, PLEAS OF THE CROWN 95 (7th ed. 1795). This remedy may be used against officers in the state Legislature, like it may be used against officers in other branches of state government. The "Chief Executive Officer of the State" may obviously serve as relator. And this Court is the *only* one that may entertain this petition.

A. A legislator like Wu is a proper object of quo warranto proceedings.

Whether quo warranto lies against a member of the House, like Wu, presents a straightforward question of statutory interpretation: The Legislature has given this Court the power to 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). The phrase "officer of the state government" must be given its plain meaning. *See Pickle v. McCall*, 24 S.W. 265, 266 (Tex. 1893). And it plainly includes a state legislator.

Pursuant to the legislative vesting clauses, TEX. CONST. art. III, §§ 1–2, Wu was "invested with some portion of the sovereign functions of the government"—*i.e.*, the Legislative power—"to be exercised by him for the benefit of the public," *Kimbrough v. Barnett*, 55 S.W. 120, 122 (Tex. 1900). As one who "immediately belong[s] to one of the three constituent branches of the state government," a legislator is clearly a "state officer." Tex. Att'y Gen. Op. No. JC-0575 (2002). What the Constitution's structure suggests, neighboring constitutional (and statutory) provisions confirm: The Constitution's Oath Clause classes

legislators among "other elected and appointed *state officers*." TEX. CONST. art. XVI, § 1(c) (emphasis added); *see also* TEX. ELEC. CODE § 1.005(4) (describing "district office" as "an office of the … state government"); TEX. GOV'T CODE § 572.002(12) (defining "state officer" to include "elected officers" encompassing legislators).

Other jurisdictions across the country likewise deem legislators government officers. *See, e.g.*, *Verry v. Trenbeath*, 148 N.W.2d 567, 575 (N.D. 1967) ("The legislators are sworn constitutional officers of the State."); *In re Leh's Contested Election*, 6 Pa. D. 152, 156 (C.C.P. Pa. 1897) (similar); *Morril v. Haines*, 2 N.H. 246, 249 (1820) (similar); *cf. Dullam v. Willson*, 19 N.W. 112, 114 (Mich. 1884).

Bewilderingly, Wu claims (at 58) that "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." It has—in Section 22.002(a) of the Government Code. He also claims that "Relators do not argue otherwise." But the Governor does—pointing to that very provision of code, and the constitutional provisions and precedent that elucidate it. Gov.BOM.20–24.

Perhaps because the statutory question is clear, Wu deflects to history, arguing (at 48–57) that quo warranto "does not lie against a legislator at all" based on "purported common law principles." Even if that is correct, any supposed historical practice cabining the universe of possible respondents could not override the broad language the Legislature used in Section 22.002(a) of the Government Code, spanning "any officer of state government," save those excepted.

More importantly, the "bedrock principle" Wu claims to have discovered turns out to be a piece of chalk. Throughout ten pages, Wu cites sources that he claims bar the use of quo warranto to oust legislators. But those cases concerned challenges to the *qualifications* of members elected to a legislative body. For example, one case says "'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) (quoting 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 833 (2d ed. 1851)). Which "power"? The "power … to judge of the elections, returns, and qualifications of the members of each house composing the legislature." STORY, *supra*, at § 833 (citing U.S. CONST. art. I, § 5); *see also Covington*

v. Buffett, 45 A. 204 (Md. 1900) (similar); *State ex rel. Ford v. Cutts*, 163 P. 470 (Mont. 1917) (similar); *Rex ex rel. Tolfree v. Clark*, 1943 CanLII 90 (Can. Ont. C.A.) (quo warranto petition arguing legislators improperly seated themselves).

The Governor, of course, does not challenge Wu's qualifications to take his seat in the first instance. Gov.BOM.60–61. That is why one of Wu's own amici argues that Article III, Sections 7 and 8 "are inapposite" and have "no relevance in this case." Brief from Denton County Democratic Club as *Amicus Curiae* Supporting Respondent at 7–11, No. 25-0674 (Aug. 27, 2025). Because the Governor does not contend that Wu "was improperly seated as a Representative," *id.* at 10, roughly twenty percent of his argument is beside the point—and *none* of his argument rebuts the statutory authority to bring a quo warranto against a state legislator.

In any event, precedent easily disproves Wu's novel theory that legislators are somehow uniquely immune to quo warranto. *See, e.g.*, *Heller v. Legislature of State of Nev.*, 93 P.3d 746, 751 (Nev. 2004) ("quo warranto is not only an adequate remedy to challenge a person's right to hold public office, it is the exclusive remedy" to oust a legislator);

Breslin v. Warren, 359 N.E.2d 1113, 1114 (Ill. App. 4th Dist. 1977) (approving quo warranto against an Illinois state representative).

What little Wu does have to say (at 60–61) about the statutory text does not move the needle. He never addresses how the precedent he relies on involved downstream delegees, as opposed to officers directly and "immediately" vested with sovereign power. Tex. Att'y Gen. Op. No. JC-0575 (2002). And by insisting that Section 22.002(a) of the Government Code exempts those who exercise diffuse power, he proves too much. No branch of our state government is entirely unitary. Are district judges no longer state officers because their decisions are subject to revision on appeal? Are inferior executive officers not state officers because they may exercise only a one-fifth share of the power lodged in the Executive Department? Wu's position leads to the conclusion that not only the Legislature, but *all three* branches nt are somehow given sovereign power without any "officers" to wield it.

At the end of the day, Wu claims (at 39) the Governor "pursues through this quo warranto action the punishment it would have the Judiciary enact." Just the opposite. The Legislature "enact[ed]" Section 22.002(a) of the Government Code. Wu may wish that legislators of the

past had authorized quo warranto over a smaller set of officers. Before he forfeited his seat, he could have advocated in the House to amend the statute to narrow its sweep. But it was not his task, then or now, to ignore what is presently law.

B. The Governor is a proper relator seeking to oust a public officeholder.

A private relator may seek quo warranto relief; a fortiori, the Governor may pursue this proceeding. The rule at common law was clear: "Any person or persons" could prosecute a writ of quo warranto to challenge a public officeholder. 4 HAWKINS, *supra*, at 96. That practice forms part of "the principles of law" that are "agreeable" to this writ. TEX. GOV'T CODE § 22.002(a).

Wu nevertheless claims (at 70) that this proceeding "can only be brought by the attorney general, a county attorney, or a district attorney." Once again, Wu confuses the basis of jurisdiction supporting this quo warranto petition. By now, the Governor has already explained four times that he brought this petition pursuant to Section 22.002(a) of the Government Code—not Chapter 66 of the Civil Practice and Remedies Code. *See* Emergency.Pet.1; Letter from Governor Abbott, No. 25-0674 (Aug. 5, 2025); Emergency.Pet.Reply.4–5; Gov.BOM.xiii, 26–27.

The Governor is happy to state that now for a *fifth* time: This petition was brought pursuant to Section 22.002(a) of the Government Code. And that provision, unlike Chapter 66 of the Civil Practice and Remedies Code, places no limits on who may serve as relator. It authorizes this Court to entertain "all writs of quo warranto" brought against covered state officers. Nor is it appropriate to borrow the procedures in Chapter 66 and then superimpose them onto Section 22.002(a) to control proceedings brought under a different statutory heading of jurisdiction. For one thing, this Court has already held that Chapter 66 "is not styled as a limitation on quo warranto and has never been so understood since its initial adoption in 1879." *Paxton v. Annunciation House*, No. 24-0573, 2025 WL 1536224, at *13 (Tex. 2025). The language the Legislature added in Section 22.002 of the Government Code plainly sought to *expand* access to quo warranto. Gov.BOM.26–27, 63.

For another thing, it would make no sense. As discussed in further detail below, *infra* Part I.C, the Legislature's conferral of original writ jurisdiction on this Court in Section 22.002(a) of the Government Code necessarily ousts any overlapping writ jurisdiction from district courts

under Article V, Section 8 of the Texas Constitution. The provisions of Chapter 66 of the Civil Practice and Remedies Code, in other words, can have no legal operation insofar as they brush up against this Court's original jurisdiction over state officers. It would be a remarkable form of resurrection, indeed, for a provision that is neutralized by another to suddenly spring back into being to cabin and constrain the provision that killed it in the first place.

Next, Wu notes (at 72) that the Attorney General is given authority to "represent the State in all suits and pleas in the Supreme Court of the State in which the State may be a party." TEX. CONST. art IV, § 22. In a quo warranto proceeding, however, the State is not the real party in interest. Instead, "the relator in a *quo warranto* proceeding is the real plaintiff, and the position of the state is that of a nominal party." *McAllen v. Rhodes*, 65 Tex. 348, 352 (1886). "The state's attorneys take no part in the proceeding, and the plaintiff's side of the case is represented by the relator's counsel alone." *Ibid.* That is precisely the circumstance presented in this case. The State, through the Attorney General as *amicus curiae*, is a nominal party in Case No.

25-0674, taking no formal part in the prosecution. The Governor as relator is the real plaintiff, actively prosecuting the case against Wu.

History and common law run in the same direction. Gov.BOM.24–33. The earliest use of quo warranto included instances where private parties acted as prosecutors in the king's name. DONALD W. SUTHERLAND, QUO WARRANTO PROCEEDINGS IN THE REIGN OF EDWARD I 1278–1294, at 7–8 (1963). Attorneys General, of course, may often assert sovereign interests in a quo warranto action. But existing practice proves that ability is not peculiar to that office—except perhaps when it comes to corporate charters. *See* TEX. CONST. art. IV, § 22.

The Constitution's conferral of authority on the Attorney General demonstrates the distinction between a suit in which the State is *a party* and a suit in which the State has *an interest*. Article IV, Section 22 plainly distinguishes suits "in which the State may be a party" from suits brought "in the name of the State." *Ibid.* That is a familiar distinction in other areas of the law. Qui tam lawsuits, for example, may be prosecuted by a private relator in the name of a sovereign government. *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 772 (2000). Even so, a sovereign government is not the real "party in

interest" based solely on the "general governmental interest" in securing compliance with its laws. *Mo., Kan., & Tex. Ry. Co. v. Hickman*, 183 U.S. 53, 60–61 (1901).

That is why, for example, the citizenship of the party actually prosecuting a case controls for purposes of federal diversity jurisdiction, even when he does so in the name of someone else. *See, e.g.*, *Childress v. Emory*, 21 U.S. 642, 669 (1823) ("executors and administrators" are "contradistinguished … from assignees"); *Mex. Cent. Ry. Co. v. Eckman*, 187 U.S. 429, 434 (1903) (guardianship on behalf of guardian); *Benner v. Great N. Ry. Co.*, 209 U.S. 24, 31–33 (1908) (shareholder derivative action on behalf of corporation).

Finally, Wu suggests (at 73–74) that the Governor exercises merely the "left-over[s]" of executive authority, in the process characterizing four-year-old precedent from the Supreme Court of the United States as "dubious." That is difficult to square with the Governor's "unique constitutional status." *Paxton v. Am. Oversight*, 716 S.W.3d 535, 549 (Tex. 2025) (Young, J., concurring). "[A]s *the superior* executive official," the Governor "clearly has constitutional authority

that transcends the rest of the executive branch. He is not just first among equals." *Ibid.* (emphasis original).

Even if Wu is right, the authority to bring this action falls within those "left-overs." The Governor's core function as "Chief Executive Officer" is to "cause the laws to be faithfully executed." TEX. CONST. art. IV, § 10. That includes "conduct[ing] ... all ... business of the State with other States and with the United States." *Ibid.* As "the official charged with seeing that the laws are faithfully executed, the governor must have some tools to discharge [his] constitutional roles and duties." *Am. Oversight*, 716 S.W.3d at 568 (Young, J. concurring). For example, he 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, even though the legislature had not so directed." Gov.BOM.29. If the Governor may direct another statewide constitutional officer to institute a suit, then he can certainly take the more restrained action of instituting suit himself as the fountainhead of executive power—without ordering the Attorney General around.

The Governor is uniquely capable of acting in his official capacity as a private relator, while also asserting the rights of the sovereign of which he is the Chief Executive. Thus, entertaining this suit will not—as Wu suggests (at 63)—open the floodgates to a deluge of petitions filed by "innumerable private citizens." The Governor is a class of one. It is difficult to imagine any other individual who could fit the descriptor of a "public-private relator," capable of asserting on relation the rights of the sovereign and still pursuing such relief "*governmentally*." *Annunciation House*, 2025 WL 1536224, at *7 (emphasis original).

C. This Court is the proper venue—and it has the last word.

Wu suggests (at 33) the Governor's exclusive jurisdiction argument is only "half-hearted." But the Governor's position is clear: Only this Court has jurisdiction to entertain this petition. Gov.BOM.30–33.

Wu's own brief inadvertently demonstrates why, when he admits (at 21):

> 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). …

That re-states the very things that divest district courts of their general jurisdiction under Article V, Section 8 of the Texas Constitution.

As a default, district courts possess "exclusive, appellate, and original jurisdiction of all actions, proceedings, and remedies" not lodged elsewhere. TEX. CONST. art. V, § 8. They lack jurisdiction, however, "where exclusive, appellate, or original jurisdiction may be conferred by this Constitution or other law on some other court, tribunal, or administrative body." *Ibid.*

Wu concedes in the language above that Article V, Section 3(a) of the Texas Constitution and Section 22.002(a) of the Government Code do just that. Those provisions qualify as "this Constitution or other law." *Ibid.* Together they confer jurisdiction—"original jurisdiction"—over all writs of quo warranto concerning state officers. *Ibid.* And they confer that jurisdiction on "some other court" besides a district court, namely, this Court. *Ibid.* Accordingly, whatever jurisdiction district courts may have had over quo warranto under Chapter 66 of the Civil Practice and Remedies Code has been "except[ed]" under our Constitution in cases against a state officer like Wu. *Ibid.* Despite Wu

claiming (at 20, 21, 23, 27, 31, 33, 36, 37) that a "district court" is "the only conceivably proper forum," literally the opposite is true.

The Governor's argument is not, as Wu claims (at 33–34), that Article V, Section 3(a) and Section 22.002(a) "convey[] exclusive original jurisdiction on this Court." Instead, those provisions simply confer original jurisdiction. Wu is right when he observes (at 35) that Section 22.002(a) does not use the words "exclusive" or "only." That is irrelevant. The jurisdiction that Section 22.002(a) confers is *made exclusive by Article V, Section 8* of the Texas Constitution. That, of course, is the provision that Wu *refused to even cite*, much less discuss, throughout the section of his brief (at 33–38) purporting to address this Court's jurisdiction.

It is difficult to know what Wu might say about the meaning of Article V, Section 8, given that he could not be bothered to brief it. But even shadow boxing a ghost confirms the Governor's reading. Does Article V, Section 8 require the "other law" that confers jurisdiction to confer *exclusive* jurisdiction? No, because that provision on its face employs a disjunctive list that countenances original jurisdiction that is not exclusive. It says district court jurisdiction is ousted by conferring

"exclusive, appellate, *or original* jurisdiction" on some other court. That means a district court lacks original jurisdiction if any court other than a district court is given original jurisdiction over the same matter—even if that jurisdiction is not exclusive.

Imagine, for example, that the Legislature gave both this Court and the Fifteenth Court of Appeals original jurisdiction to entertain writs of quo warranto. District court jurisdiction over the same case would thereby be ousted, even though the other courts would possess non-exclusive jurisdiction. Under current law, however, the Legislature has not given intermediate courts of appeals jurisdiction to issue writs of quo warranto. *Compare* TEX. CONST. art. V, § 3; TEX. GOV'T CODE § 22.002(a) (together conferring original quo warranto jurisdiction upon this Court), *with* TEX. CONST. art. V, § 6; TEX. GOV'T CODE §§ 22.201–22.2151, 22.221 (nowhere conferring original quo warranto jurisdiction upon courts of appeals).

By operation of Article V, Section 8, this Court plainly possesses both original *and* exclusive jurisdiction over this petition. For that reason, Wu's arguments about the lack of any exigency (at 21–23) are beside the point. In *State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489

(Tex. 1996), this Court asked whether especially "compelling reasons" existed to entertain an original petition for a writ of quo warranto, including whether "time is of the essence." *Id.* at 490. It did so for a specific reason. The Court took for granted (and the parties did not dispute) that quo warranto was available in district court. So, the petitioner was required to make a heightened showing to evade the Court's practice of directing parties "seeking quo warranto to first pursue their claim in district court." *Ibid.*

That analysis has no application where—as here—the petitioners *could not* "first pursue their claim in district court." *Ibid.* If it would have been "unfair to all concerned" to require district court litigation first in *Angelini*, surely it would be "unfair" to bar the courthouse door entirely where district court litigation is unavailable. *Id.* at 491.

In any event, time is still of the essence because Wu is "improperly holding over in office" after forfeiting his seat. *Id.* at 490. Wu did not cure the issue by rushing back to his former desk. He has only made matters more urgent by acting without lawful authority. First, each passing day, H.D. 137 receives *ultra vires* pseudorepresentation from a usurper. *See e.g.*, H.R. JOURNAL, 89th Leg., 2d Spec. Sess. 65, 74, 101,

120–125, 138, 162, 164–169, 175–178, 189–193, 196–201, 216–223, 226–231, 254, 269–271, 278–281, 289–290, 305–306, 310–311, 320, 324, 328–329, 331–332, 337–338, 342–343, 349, 355 (Tex. 2025); H. Select Comm. on Cong. Redistricting Minutes 2, 89th Leg., 2d Spec. Sess. (Tex. August 18, 2025). Every (actual) legislative act Wu has taken since his return is invalid. *Angelini*, 932 S.W.2d at 490.

Second, state law prescribes the manner to fill a vacancy in the state Legislature: "An unexpired term in office may be filled *only* by a special election in accordance with this chapter." TEX. ELEC. CODE § 203.002 (emphasis added). And a special election may be ordered only by the Governor. TEX. CONST. art. III, § 13(a); TEX. GOV'T CODE § 3.003. If Wu forfeited his office, as the Governor argues, he may not unilaterally re-install himself in the House. The Governor, meanwhile, cannot unilaterally declare the seat vacant to call an election. *In re Bd. of Sch. Directors of Carroll Tp.*, 180 A.2d 16, 17 (Penn. 1962). This Court must adjudicate that question using the "speedy" remedy of quo warranto. *Delgado*, 140 U.S. at 590.

Finally, "there are no disputed issues of fact." *Angelini*, 932 S.W.2d at 490. Tellingly, Wu claims (at 74–78) that only one of the

three asserted bases for forfeiture "turns on disputed fact issues," namely, bribery. (Abandonment and absenting apparently do not require factual determination.) Even as to that claim, however, Wu manages only to "generally dispute" the Governor's account. Resp.Emergency.Pet.4. After-the-fact, self-serving, and conclusory assertions in a 3-page affidavit do nothing to raise a fact issue with concrete allegations in the Governor's record that exceeds 400 pages. *See Ryland Grp., Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) (per curiam) ("Conclusory affidavits are not enough to raise fact issues.").

To this day, Wu still does not identify which part of the Governor's allegations is false, much less attempt to show the facts really are otherwise—despite shouldering the burden of proof. *See also* JAMES L. HIGH, A TREATISE ON EXTRAORDINARY LEGAL REMEDIES, at 457–458 (1874) ("the burden rests upon the respondent of showing a good title to the office whose functions he claims to exercise" and "the continued existence of every qualification necessary to the enjoyment of the office"); SUTHERLAND, *supra*, at 7–8 (In quo warranto "[e]very advantage [is] given the plaintiff. He needed to offer nothing on his own behalf, but by the writ alone forced the defendant actively to make out a case,

which he could then attack. The usual positions of plaintiff and defendant were reversed."). The Court should not reward Wu's refusal to take these proceedings seriously with a third bite at the apple.

Finally, Wu's jury trial argument is not serious. Emergency.Pet.Reply.5–7. This is not a "district court." TEX. CONST. art. V, § 10. And quo warranto was not historically tried by a jury—just the opposite. *Id.* art. I, § 15. The cases Wu cites do not change things. In *Pease v. State*, the respondent relied on a *statutory* entitlement to a jury trial in district court, which has since been repealed. 228 S.W. 269, 270 (Tex. App.—San Antonio 1921, writ ref'd) (citing S.B. 79, § 4, 16th Leg., 1st Spec. Sess. (Tex. 1879)). And in *Matter of Troy S. Poe Trust*, this Court found there was no right to a jury trial. 646 S.W.3d 771, 778 (Tex. 2022).

Meanwhile, the Governor cited a litany of U.S. Supreme Court cases that Wu finds no way around. Consider his effort to distinguish *Kennard v. Louisiana ex rel. Morgan*, 92 U.S. 480 (1875). The statute at issue there said the quo warranto respondent was not entitled to a jury trial and "placed the burden of proof upon him." *Id.* at 482. Pursuant to that scheme, the Supreme Court of Louisiana approved ouster of a state

court judge "within twenty-four hours." *Ibid.* And the Supreme Court of the United States deemed all this "properly" done. *Id.* at 483. If there had been a constitutional right to a jury trial, as Wu claims, the statute denying one would have been invalid. Instead, the Supreme Court was content: "This was 'process.'" *Id.* at 482.

That is why the U.S. Supreme Court has repeatedly found that ouster through quo warranto—under the normal course of state court proceedings—presents "not a shadow of a federal question." *McCain v. City of Des Moines*, 174 U.S. 168, 181 (1899); *see, e.g.*, *Cosmopolitan Club v. Virginia*, 208 U.S. 378, 385 (1908); *New Orleans Waterworks Co. v. Louisiana*, 185 U.S. 336, 351 (1902); *Foster v. Kansas*, 112 U.S. 205, 206 (1884); *Delmar Jockey Club v. Missouri*, 210 U.S. 324, 333 (1908). Notice and opportunity to be heard on a petition for a writ of quo warranto before "the highest court of the State" is all the process Wu is due. *Kennard*, 92 U.S. at 483; *see Standard Oil Co. of Ind. v. Mo. ex inf. Hadley*, 224 U.S. 270, 290 (1912).

II. A Proper Understanding of the Constitution's Quorum Requirement Shows Wu Forfeited His Office.

Because Wu's former duties necessarily implicated the public good, he was obligated "to attend [to them] without any demand or

request." *The Earl of Shrewsbury's Case*, 9 Co. Rep. 46b, 50a, 77 Eng. Rep. 798, 804 (K.B. 1616). His failure to do so "is a forfeiture." 9 Co. Rep. at 50a, 77 Eng. Rep. at 805. It does not matter that he now "continue[s] to assert" an interest in his former office. *Honey v. Graham*, 39 Tex. 1, 16 (1873). Wu's argument on the merits hinges entirely on recasting the duties of a legislator in his own image. But the Constitution is not his to rewrite. The Quorum Clause imposes a *duty* to participate—and historical practice supports it. Wu openly and willfully neglected those duties during the Special Session, sought and accepted bribes—for himself and for others—to abandon those duties, and fled indefinitely from the sovereign territory he purports to represent.

A. Constitutional text shows out-of-state flight conflicts with a legislator's duty to represent constituents during session.

Every elected officer of this State swears an oath to "faithfully execute the duties of the office" to which they are elected. TEX. CONST. art. XVI, § 1. The Constitution defines "the duties of the office" of a Representative, and establishes at its core the obligation to participate during a legislative session. That means meeting *in the chamber* to introduce legislation, hold hearings, and act upon bills. *See id.* art.

III, § 5(a)–(b); *id.* art. III, § 58. Attendance is required, hence why it may be "compel[led]," *id.* art. III, § 10, and why votes are recorded for "each member," *id.* art. III, § 12(b). It is also why privileges and benefits are designed to facilitate the "session"-related work "in either House." *Id.* art. III, § 14; *id.* art. III, § 21; *id.* art. III, § 23.

The text of the Quorum Clause underscores it is not an invitation to flee the State and obstruct the legislative process. Instead, it states a constitutional obligation. The first half sets a numerical threshold, while the second half holds out tools to help ensure that numerical threshold is met. *Id.* art. III, § 10. In *In re Abbott*, this Court noted that the second half helps to interpret the first: Even if "a bare quorum requirement" could be interpreted to invite quorum breaking, that reading fails given that the Texas Constitution authorizes the House to "compel attendance of absent members." 628 S.W.3d 288, 295, 297 (Tex. 2021).

The Supreme Court of the United States understood "the federal constitution's textually indistinguishable" Quorum Clause in Article I, Section 5, *id.* at 295, just the same way more than a hundred years ago. Rather than reading that language as protecting a right to flee as part

of a legislator's duties, the Supreme Court said the opposite. The Quorum Clause imposes a "requirement *of* a quorum," not just the requirements *for* a quorum. *United States v. Ballin*, 144 U.S. 1, 9 (1892) (quoting *Attorney General v. Shepard*, 62 N.H. 383, 384 (1882)) (emphasis added). Legislators, in turn, have a "duty" to help establish a quorum to do business. *Ibid.* And the Clause's numerical threshold is *not* an invitation for abuse as "a means of suspending the legislative power." *Ibid.*

Remarkably, Wu cites *Ballin* only once (at 56), turning a blind eye to its discussion of the Quorum Clause. Instead, he plows full speed ahead claiming—no less than seventeen times (at 14, 16, 17, 19, 24, 28, 29, 30, 38, 40, 42, 45, 47, 63, 64, 65, 66)—that he was merely honoring his oath by fleeing the State to deprive the House of a quorum. He "never stopped working" and "faithfully carried out his duties," he says, albeit from far-flung States. But not all "activities in opposition" to bills that a representative dislikes "are legislative functions." The Texas Constitution does not bless all forms of #resistance.

Imagine a representative staunchly opposed to a bill set to hit the floor. He has even convinced himself the bill in question "is illegal,

unconstitutional, and harmful." Wu.R.0016. The morning of the debate, knowing the vote will be close, he SWATs a colleague whose vote might prove determinative and prevents that member from appearing and voting. (Or, perhaps he simply pulls the fire alarm as the vote gets underway.[1]) Is that "protected," legitimate "activit[y] opposing legislation"? Resp.BOM.64. Of course not. The rough and tumble world of politics may provide wide berth for disagreement and delay, but it is not a free-for-all. Representatives must oppose legislation *as legislators*, participating in the chamber and "act[ing] upon" bills. The ends (disagreement over redistricting) do not justify Wu's chosen means (abdication of duty by breaking quorum).

B. Historical practice furnishes no support for willful and indefinite flight from the State during session.

Wu and his amici previously argued that a venerable tradition ensconces the quorum break as a legitimate "constitutional tool." Letter from Senator Alvarado et al. as *Amici Curiae* Supporting Respondents, No. 25-0687 (Tex. Aug. 12, 2025). Now, after the Governor provided an

[1] Hannah Rabinowitz, *Rep. Bowman Charged with Pulling Fire Alarm in House Office Building When There Wasn't an Emergency*, CNN (Oct. 25, 2023), https://www.cnn.com/2023/10/25/politics/bowman-charged-pulling-fire-alarm.

exhaustive review of historical practice, Wu prefers to ignore history altogether.

Wu (at 43) points to the 1870 episode as evidence of the Legislature's authority to punish misconduct internally. But he has nothing to say about how both sides of that debate rejected quorum breaking. The quorum enforcers said the absent Senators had "abandoned their seats," S. JOURNAL, 12th Leg., Reg. Sess., 252 (Tex. 1870), and chided their colleagues' conduct as a damnable plan "to resign, for the purpose of arresting the machinery of government," *id.* at 252–253. The "quorum breakers," meanwhile, "disclaimed any intention of breaking a quorum," *id.* at 263, claiming they merely withdrew to a committee room to discuss how to secure further debate, *id.* at 262.

It is impossible to overstate the irony. The trailblazers that Wu and others have pointed to sought the very opposite: They wanted *more* debate *in the Senate chamber*; they never sought to prevent debate from getting underway in the first place. And they recorded their objections in the Journal "to prevent successors" from "depriv[ing] their constituents of their services" during session. *Id.* at 264–265. Wu has *embraced* the error they counseled against, touting his deliberate

decision to stab at the heart of representative government and deprive his constituents of representation in the Texas House.

Next, Wu claims (at 24) that "quorum-breaking is a form of filibuster that has been recognized since the Republic's founding." Once again, "a page of history is worth a volume of logic." *N.Y. Tr. Co. v. Eisner*, 256 U.S. 345, 349 (1921). Speaking of her colleagues who broke quorum in 1979, Senator Betty Andujar put it this way, distinguishing an (illegitimate) quorum break from a (legitimate) filibuster:

> *They didn't stay on the floor and filibuster, which is permissible*. They used up the taxpayers' time and money at a very crucial time, at the end of the session, where literally it did interfere with the business of the session.
> …
> [I]t interfered with the total work of the entire Legislature. Nothing could operate while they were gone. They simply stood there and thumbed their nose at the 66th Legislature and the taxpayer who was paying for it. *They didn't have the guts to stand in there and fight and filibuster and take the losses that they thought they were going to have.* So it was a chicken, juvenile, childish thing to do.

QR.00228–00230 (emphases added). Wu finds no shelter in legitimate legislative tactics—like engaging in lengthy debate, filibustering, and offering amendments—that bear no relation to quorum breaking. Resp.BOM.67 (citing *Local 28 of the Sheet Metal Worker's Int'l Ass'n v. EEOC*, 478 U.S. 421, 460 (1986)).

The notion that the Texas Constitution somehow blesses quorum breaking is supported by "no authority." *In re Abbott*, 628 S.W.3d at 297. Quorum breaking is, instead, a late-breaking perversion of legislative duties, just twenty years old. And it flies in the face of the "prevailing understanding" of our Constitution. *Id.* at 293–294. This Court should toss Wu's work of historical fiction into to the wastebin.

C. Wu's unprecedented conduct here—fleeing out of state, indefinitely, for the purpose of "ending" a session—amounts to forfeiture.

Centuries of precedent establish that an officeholder may forfeit his office based on abandonment, bribery, or absenteeism. Wu has done all three. Gov.BOM.50–59. He endeavors to evade that conclusion primarily by downplaying his conduct and fashioning a straw man.

Throughout his brief (at 27, 44, 47, 68), Wu portrays the Governor as arguing that:

- a Representative forfeits office "*simply* by fleeing the State to break quorum";
- "a quorum break *automatically* effect[s] a forfeiture of office";
- "successful quorum-breaking (apparently of *any kind*, in or out of state)" is grounds for ouster; and
- this petition seeks "liability—including judicial removal, if the State's argument prevails—for *any* attempt to delay or block votes."

Of course, Wu did not "simply" flee the State. He did much more. He preplanned his departure weeks in advance—targeting destinations out of state where the remedies in Article III, Section 10 and Section 11 could not touch him. He fled indefinitely, determined to remain gone until the occurrence of uncertain contingencies and for as long as House members sought to carry out the legislative work on the Governor's Special Session call. Worse still, he abdicated his legislative duties in exchange for money.

The Governor, accordingly, has not argued that "any kind" of quorum break "automatically" effects a forfeiture. Members out of the chamber on an excused absence, an unexcused absence for sudden illness, an in-state quorum break subject to compulsion, and even a brief flight out of State without express intention to remain away indefinitely to "kill" session—*all* of these hypothetical members are "differently situated" from Wu. Gov.BOM.50–53.

In the main, Wu disputes *none* of the Governor's allegations about where Wu went, what he said, and what he did. The Governor has now repeatedly laid out Wu's pre-meditated flight from Texas, his remaining out of the State potentially "to infinity," at the instigation of private

donors, for the express purpose of ending an entire session. Emergency.Pet.3–11; Gov.BOM.2–16, 57; QR.00398, at 01:18. Wu, for his part, has repeatedly failed to engage.

Instead, Wu argues he was still engaged in *other* legislative tasks. While away, Wu boasts that he:

- read some bills;
- joined some meetings;
- organized additional meetings;
- responded to media requests;
- attended a press conference with the Democratic Party Chair;
- attended another press conference with the Illinois Governor;
- attended another press conference with the Illinois Lieutenant Governor;
- attended another press conference with a California delegation;
- attended a meeting with a former president; and
- attended a few more press conferences.

Resp.BOM.QRW.0015–0016.

It does not matter that Wu may have been "alert in promoting that incidental feature" of his duties while he was "extremely

indifferent" to those other core duties. *Delmar Jockey*, 210 U.S. at 334. Assorted media hits and "meetings" with out-of-state officials do not change the fact that, while his colleagues were dutifully working in the Capitol, Wu repeatedly espoused his intention to remain away from Texas indefinitely—and admitted that was the plan all along. Gov.BOM.10–13, 57–58.

Next, Wu boasts that he has returned to Texas, arguing this disproves "an actual or imputed intention on the part of the officer to abandon and relinquish" the office. Resp.BOM.28 (citing *Steingruber v. City of San Antonio*, 220 S.W. 77, 78 (Tex. [Comm'n Op.] 1920)). He conveniently leaves out that such "intention may be inferred from the acts and conduct of the party." *Steingruber*, 220 S.W. at 78. And he chose not to produce any evidence of his then-mental state to contradict his public statements and actions in the weeks he absconded from Texas. Scurrying back now is suggestive of nothing other than a desire to evade the consequences of his actions.

Virtually every employer would presume an employee has abandoned the job if that employee failed to show up to work for two weeks in an attempt to harm the employer's operations, bragged about

it publicly and online, dared the employer to do something about it, all while posting vacation photos from another state. Imagine this employee then returned to the job site and demanded the employer return him to work. Every rational employer would treat this insubordination and absence as a resignation. And every Texan would expect such public refusal to show up for work to result in termination.

Yet, Wu, as a representative of ordinary Texans, claims he is the exception to the rule that applies to everyone else. This Court should not approve Wu's attempt to confuse and complicate this basic principle that every ordinary Texan is expected to abide by to remain employed. In a representative form of government, Texans are ill-served by representatives who live by a separate set of rules. Wu pretends his abandonment of office is akin to some distorted form of a labor strike, yet he skipped the collective bargaining phase. His opportunity to bargain with the Legislature was in the Texas Capitol, not in Chicago. TEX. CONST. art. III, § 58 ("The Legislature shall hold its sessions at the City of Austin, which is hereby declared to be the seat of government.").

Wu created a vacancy when he fled Texas and expressed his intent to remain absent. He may not suddenly change his mind, opting

unilaterally to fill a vacancy that he unilaterally created. Nor can he end-run this Court's review. To his credit, Wu nowhere argues this dispute is moot—because it is not. The Governor did not seek to impose a penalty or compel Wu's return; instead, this petition seeks a judicial determination that Wu created a vacancy. This Court's writ power is more than capable of outrunning a public officer seeking to evade the judiciary's authority by pointing to eleventh-hour changes in position. *Honey*, 39 Tex. at 11.

III. It Is Wu's Position—Not the Governor's—that Would Upset Our Separation of Powers.

The political question doctrine, "primarily a function of the separation of powers," does not insulate from review all issues that are political in nature. *Am. K-9 Detection Services, LLC v. Freeman*, 556 S.W.3d 246, 253 (Tex. 2018). Instead, it prevents courts from inquiring into matters that have been textually committed to a "coordinate political department" or that lack "judicially discoverable and manageable standards for resolving [them]." *Ibid.* Neither is implicated.

To decide this case, the Court need only look to the authority conferred in Article V, Section 3(a) and Section 22.002(a) to issue "all

writs of quo warranto." Gov.BOM.30. Wu's arguments about the authority of the Legislature based on Article III ignores both the text of Article V and the statutory mechanism put in place by the Legislature.

As for those matters that are textually committed to the Legislature, the Governor has no concern. *See Powell v. McCormack*, 395 U.S. 486 (1969). He does not seek to second-guess whether the House should compel its members to attend, how the House chose to compel its members to attend, or the way the House may discipline them. TEX. CONST. art. III, §§ 10, 11. Similarly, the Governor does not challenge whether Wu was chosen by the qualified voters of his district or, at the time of election, was himself qualified for his seat. TEX. CONST. art. III, §§ 4, 7, 8.

Neither case Wu cites (at 41–48) proves an obstacle. In *In re Abbott*, this Court found that the Quorum Clause "commits that question"—how a chamber of the Legislature might compel attendance of absentees—"to the discretion of the chamber." 628 S.W.3d at 292. Again, the Governor never sought to compel Wu's attendance or to superintend the Legislature's compulsion power. Similarly, in *In re Turner*, 627 S.W.3d 654, 657 (Tex. 2021), this Court determined it

would not wade into an intra-chamber dispute about how to order legislative business. Once again, the Governor does not seek to contest Speaker Burrows' decisions on how to order the House Calendar.

Courts in this State and across the country have used quo warranto to determine whether public officials rightfully hold office. *See e.g., Griffin v. State*, 147 S.W. 328, 329 (Tex. App.—San Antonio 1912, writ ref'd); *Steingruber*, 220 S.W. at 78; *Lewis v. Drake*, 641 S.W.2d 392, 393 (Tex. App.—Dallas 1982, no writ); *Heller*, 93 P.3d at 751; *In re Bd. of Sch. Directors*, 180 A.2d at 18; *Breslin*, 359 N.E.2d at 1114. Contrary to Wu's assertion (at 38–39), the Court need not fashion a brightline for where permissible politicking ceases and impermissible abdication starts, given the unprecedented nature of Wu's conduct. Gov.BOM.50–53.

To the extent anyone is encroaching on the separation of powers or forcing answers to sensitive political questions, it is Wu. Gov.BOM.59. *Wu* has raised the political question about whether this "swamp[y]" Court should have exercised its discretion to not "dump" this suit. *Ibid. Wu* has engaged in "intercourse and business of this State with other States,"—a power vested solely with the Governor—by

lobbying other sovereigns to pass retributive legislation. *Id.* at 15; TEX. CONST. art. IV, § 10. And *Wu* championed his success in grinding the wheels of the Legislature to a halt. Gov.BOM.15. Those are the issues this Court should be concerned about, not the Governor peaceably seeking a *de iure* recognition of a *de facto* reality: Wu chose to no longer serve as a representative. The Court should honor that choice.

PRAYER

The Court should remove Representative Wu from his seat as state Representative for Texas House District No. 137.

Respectfully submitted.

GREG ABBOTT
Governor of Texas

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CERTIFICATE OF COMPLIANCE

Undersigned counsel hereby certifies that this brief: complies with the type-volume limitations in Rule 9.4(i)(2)(C) because Microsoft Word reports that it contains 7,476 words, excluding portions exempted by Rule 9.4(i)(1); complies with the type-face limitations in Rule 9.4(e) because it uses 14-point font; and complies with the requirement of Rule 52.3(j) that every factual statement be supported by competent evidence included in the appendix previously filed.

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CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that, on September 4, 2025, a true and correct copy of the foregoing petition was served by email to all counsel of record.

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