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SUPREME COURT OF TEXAS
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Nos. 25-0674 & 25-0687

In the Supreme Court of State of Texas

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

IN RE STATE OF TEXAS

Relators

(Consolidated for Briefing on the Merits)

On Original Petitions *Quo Warranto*

BRIEF OF AMICUS CURIAE DENTON COUNTY DEMOCRATIC CLUB

IN SUPPORT OF RESPONDENT REPRESENTATIVE GENE WU, ET AL.

Richard Gladden
State Bar No. 07991330
1204 West University Dr., Ste. 307
Denton, Texas 76201-1901
940/323-9300 (voice)
richscot1@hotmail.com (email)
Attorney for Amicus Curiae ñDCDCò

August 27, 2025

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BRIEF OF AMICUS CURIAE DENTON COUNTY DEMOCRATIC CLUB IN SUPPORT OF RESPONDENT REPRESENATIVE GENE WU

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF TEXAS:

COMES NOW Amicus Curiae Denton County Democratic Club (ñDCDCò), and, pursuant to Rule 11 of the Texas Rules of Appellate Procedure, respectfully submits this amicus brief, in support of Respondent Representative Gene Wu, to assist the Court in considering the issues presented in these consolidated *quo warranto* proceedings initiated by Relators Governor Greg Abbott (No. 25-0674) and Texas Attorney General Ken Paxton (No. 25-0687). Amicus DCDC urges the Court to dismiss Relatorsô petitions and to deny Relators all relief in any form on the merits.[1]

INTEREST OF AMICUS DCDC

Since 1993 Amicus DCDC has been a General-Purpose Political Action Committee (ñGPACò) registered with the Texas Ethics Commission, and its activities include organizing regular meetings of its members and organizing

[1] For simplicity, Amicus DCDC has submitted this brief solely in support of Respondent Representative Gene Wu in Cause No. 25-0674, but suggests what is contained in this brief applies equally in support of all other Representatives named as Respondents in Cause No. 25-0687.

events in support of local, statewide and national political candidates and other persons aligned with the Democratic Party. The President of DCDC, Lindsay Keffer, has authorized the filing of this amicus curiae brief in accordance with authority conferred by, and on behalf of, Amicus DCDC.

As with most political organizations Amicus DCDC has a deeply-held interest in the democratic process. The submission of this brief arises from its concern that the *quo warranto* petitions filed by Relators pose a serious and troubling threat to constitutional Democracy, as that idea was perceived by the Framers of the U.S. and Texas Constitutions.

PURPOSE OF BRIEF

While Amicus DCDC is confident counsel for Respondent Representative Gene Wu will more than adequately represent his interests in this matter, generally; it is not as confident that certain aspects of the issues raised by Relatorsô petitions will be fully presented. Amicus DCDC has therefore submitted this brief for the purpose of insuring all questions that should be considered by the Court are fully presented. No fee has been paid and no fee will be accepted by Amicus DCDC, its counsel or others, for the preparation of this brief.

INTRODUCTION

In its order dated August 11, 2025, the Court directed the parties to include in their respective briefs on the merits argument discussing ñthe import of the

House of Representativesô authority under TEX. CONST., art. III, §§ 8, 10, and 11.ò[2] In this brief Amicus has included such a discussion, but to this it has added argument pertaining to Article II, § 7 of the Texas Constitution, which provides the constitutionally enumerated ñqualificationsò for Representatives.

APPLICABLE LAW

Article III, § 7 of the Texas Constitution (ñSection 7ò or ñ§ 7ò) provides:

> ñNo person shall be a Representative, unless he be a citizen of the United States, and, at the time of his election, a qualified elector of this State, and shall have been a resident of this State two years next preceding his election, the last year thereof a resident of the district for which he shall be chosen, and shall have attained the age of twenty-one years.ò

Article III, § 8 of the Texas Constitution (ñSection 8ò or ñ§ 8ò) provides:

> ñEach House shall he the judge of the qualifications and election of its own members; but contested elections shall be determined in such manner as shall be provided by law.ò

Article III, § 10 of the Texas Constitution (Section 10ò or ñ§ 10ò) provides:

> ñTwo-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.ò

Article III, § 11 of the Texas Constitution (ñSection 11ò or ñ§ 11ò) provides:

> ñEach 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.ò

[2] Order, Supreme Court of Texas, Nos. 25-0674 & 25-0687 (August 11, 2025).

Rule 5, § 3 (d) of the Rules of the Texas House of Representatives (89th Leg., R. S., H. R. 4) (adopted Jan. 28, 2025) (ñRule 5 (3)(d)ò) provides in relevant part:

> ñIf a member is absent without leave for the purpose of impeding the action of the house, the member is subject toé expulsion in the manner prescribed by Section 11, Article III, Texas Constitution.ò

ANTECEDENT TEXAS CONSTITUTIONAL PROVISIONS

Section 7 of current Article III: Beginning with Article III, § 6 of the Texas Constitution of 1845, and with only minor variations thereafter, ñ[a]ll Texas constitutions except that of 1866 have imposed identical age and residence requirements for representatives; the Constitution of 1866, as in the case of senators, increased the state residence requirement to five years and also specified that a representative be a white citizen.ò 1 George D. Braden, *et al*., *The Constitution of the State of Texas: An Annotated and Comparative Analysis*, 113 (1977) (ñ*Braden*ò).[3]

Section 8 of current Article III: In 1895,[4] ñthe Texas Legislature wisely devised statutory procedures to keep ineligible candidates for election to that body off the ballot in the first place.ò[5] Naturally ña candidate so kept off challenged the statutory procedure as unconstitutional because of usurping the legislatureôs

[3] Article III, § 6 (1845); Article III, § 6 (1861); Article III, § 5 (1866); Article III, § 5 (1869); and, Article III, § 7 (1876).
[4] Act of April 20, 1895, 24th Leg., R.S., ch. 56, § 2, 1895 Tex. Gen. Laws 81-82 (H.B. 93); Vernonôs Annotated Revised Civil Statutes, Article 1810a (1895).
[5] 1 *Braden*, *supra*, at 114.

prerogative to judge the qualifications of its members, but the supreme court had little difficulty in sustaining the procedure.ò[6] Thus, ñin practice qualification for the legislature is determined before the first primary election, and the legislature is [currently] spared the unrewarding task of determining who is and who is not qualified to be seated.ò[7]

Section 10 of current Article III: Beginning with the Texas Constitution of 1836, the text of present § 10 ñhas remained virtually unchangedé with the 1845 Constitution merely adding the concluding phrase ñin such manner and under such penalties as each House may provide.ò[8] On July 14, at the Constitutional Convention of 1845, Delegate Hiram Gorge Runnels, as Chair of the Committee on the Legislative Department, presented a committee report which proposed ñthat a majority of each House shall constitute a quorum to do business.ò[9] On July 23, 1845, after further consideration of this provision by the Committee of the Whole,

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[6] 1 *Braden*, *supra*, at 114, citing *Burroughs v. Lyles,* 181 S.W.2d 570 (Tex. 1944); and, *Kirk v. Gordon*, 376 S. W .2d 560 (Tex. 1964).)

[7] 1 *Braden*, *supra*, at 114.

[8] 1 *Braden*, *supra*, at 117; *compare*, Article I, § 13 (1836); Article III, § 12 (1845); Article III, § 12 (1861); Article III, § 11 (1866); Article III, § 15 (1869); and, Article III, § 10 (1876); see also, Article III, ñPlan and Powers of Provisional Governmentò (1836) (ñtwo-thirds of the members elect of the General Council shall form a quorum to do businessò).

[9] *Journals of the Convention, Assembled at the city of Austin on the Fourth of July, 1845, for the Purpose of Framing a Constitution for the State of Texas*, 53, 55 (July 14, 1845) (Austin: Miner & Cruger, printers to the Convention, 1845) (ñ*1845 Convention Journal*ò).

the Committee amended § 14 to insert the words ñtwo-thirdsò after the words ña majority ofò [each House shall constitute a quorum].[10]

On August 12, 1845, upon consideration of a subsequent report by a Select Committee to whom was referred the sections on the Legislative Department, Delegate Richard Bache (the grandson of Benjamin Franklin), moved to strike out the words ña majority ofò in § 14, where those words appeared before the words ñtwo-thirds.ò[11] Delegate Bacheôs motion was approved; the section was adopted;[12] and a motion to reconsider the vote approving what was then-designated as § 14 (now current Article III, §10) was interposed by Delegate William Lockhart Hunter, but failed.[13]

Section 11 of current Article III: Beginning with the adoption of Article 43 of the Texas Constitution of 1833, and under its successor provision Article I, § 14 of the Constitution of 1836, Texas permitted ñexpulsionò of Representatives, if supported by a two-thirds vote of the House, as a ñpunishmentò for a Representativeôs disorderly ñbehavior.ò Current § 11 resembles those two earlier provisions except that it substitutes the word ñconductò in place of ñbehaviorò; and as noted by Professor Braden, it was the 1845 Constitution that changed the word

[10] *1845 Convention Journal*, *supra*, at 99 (July 23, 1845).
[11] *Id.*, at 224 (August 12, 1845).
[12] *Ibid.*
[13] *Id.*, at 225 (August 12, 1845).

ñbehaviorò to the word ñconduct.ò[14] The Constitution of 1869 deleted the phrase ñbut not a second time for the same offence.ò However, the Constitution of 1876 ñreincorporated this [latter] phraseò [*i.e.*, ñbut not a second time for the same offenseò], ñso that the wording [of § 11] is as it reads today.ò[15]

ARGUMENT

1) *For Several Reasons, Article III, Sections 7 and 8 of the Texas Constitution are Inapposite to Resolution of any Issue Presented by the Relators' Petitions.*

As previously mentioned, in its order dated August 11, 2025, the Court directed the parties to include in their respective briefs on the merits argument discussing ñthe import of the House of Representativesô authorityò under Article III, § 8 of the Texas Constitution. Because the meaning of § 8 and its reference to the ñqualificationsò of House Members is inextricably tied to Article II, § 7 of the Texas Constitution, which provides the constitutionally enumerated ñqualificationsò for Representatives, Amicus DCDC includes a discussion of the latter constitutional provision.

[14] 1 *Braden*, *supra*, at 118

[15] 1 *Braden*, *supra*, at 118; *compare*, Article 43, *Constitution of Form of Government of the State of Texas* (1833); Article I, § 14 (1836); Article III, § 13 (1845); Article III, § 13 (1861); Article III, § 12 (1866); Article III, § 16 (1869); and, Article III, § 11 (1876).

2) ***Sections 7 and 8 of Article III of the Texas Constitution Govern the "Exclusion" of Representatives-Elect, not the "Expulsion" of Seated Representatives.***

The Supreme Court of Texas has recognized that when there is a the dearth (or absence) of prior Texas precedential authority relevant to the interpretation of a particular provision in the Texas Constitution, it is appropriate for Texas courts to examine federal decisional law for guidance when the federal constitution contains parallel or textually similar provisions.[16] With regard to Article III, §§ 7, 8, 10 and 11 of the Texas Constitution, Texas decisional law is scarce; but each of these provisions have nearly identical kin in the U. S. Constitution, *i.e*., under Article I, § 2, cl. 1 and 2; and Article I, § 5, cl. 1 and 2. Furthermore, based on a lengthy historical analysis, the U.S. Supreme Courtôs decision in *Powell v. McCormack*, 395 U.S. 486 (1969) illustrates why Article III, §§ 7 and 8 of the Texas Constitution have no bearing on any claim alleged by the Relators in the present case.

Article I, § 2, cl. 1 and 2 of the U.S. Constitution (ñArticle I, § 2, cl. 1 and 2ò) comprise what are referred to as the ñstanding qualificationsò for Members of

[16] *Heckman v. Williamson Cnty*., 369 S.W.3d 137, 154 (Tex. 2012) (ñGiven the parallels betweenò the federal constitutional test for standing and the test for standing under the Texas Constitution, ñwe turn for guidance to precedent from the U.S. Supreme Court.ò).

the U.S. House of Representatives. Similarly to Article III, § 7 of the Texas Constitution, Article I, § 2, cl. 1 and 2 provide that:

> ñThe House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.
>
> ñNo Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.ò

Article I, § 5, cl. 1 and 2 of the U.S. Constitution, which are similar to Article III, §§ 8, 10 and 11 of the Texas Constitution, more compactly provide that:

> ñEach House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.
>
> ñEach House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.ò

In *Powell v. McCormack*, *supra*, the U.S. Supreme Court accepted the argument asserted by a U.S. Representative who had been ñexcludedò for ñmisconductò from the U.S. House. The Representative contended that the constitutional authorities of the House to ñexcludeò a member, and the power to ñexpelò a member, ñare not fungible proceedings.ò *Id*., 495 U.S. at 512. Thus, when ñdetermin[ing] the meaning of the phrase to óbe the Judge of the

Qualifications of its own Members,ôò as it appears in Article I, § 5, cl. 1 of the U.S. Constitution, the U.S. Supreme Court ruled ñthe Constitution leaves the House *without authority to exclude* any person, duly elected by his constituents, who meets all the requirements for membership expressly prescribed in the Constitution [under Article I, § 2, cl. 1 and 2].ò *Id*., 495 U.S. at 522 (emphasis added).

As set out above, the literal texts of Article III, §§ 7 and 8 of the Texas Constitution are essentially identical to the federal texts defining the Legislative power to ñexcludeò a Representative under Article I, § 2, cl. 1 and 2 of the U.S. Constitution. Furthermore, the Supreme Court of Texas has ruled that ñ[w]here the Constitution declares the qualifications for office, it is not within the power of the Legislature to change or add to these unless the Constitution gives that power.ò *Dickson v. Strickland*, 265 S.W. 1012, 1015 (Tex. 1924); *see also*, Thomas M. Cooley, *A Treatise on the Constitutional Limitations which Rest Upon the Legislative Power of the States of the American Union*, 64 (Boston: Little, Brown & Co. 1868) (ñwhen the constitution defines the circumstances under which a right may be exercised or a penalty imposed, the specification is an implied prohibition against legislative interference, to add to the condition, or to extend the penalty to other cases.ò)

In summary, because in the present case there is no contention by Relators that Respondent Wu was improperly seated as a Representative, or any contention

by Relators that Representative Wu at the time he was seated did not meet ñall the requirements for membership expressly prescribed inò Article III, § 7 of the Texas Constitution, *cf.*, *Powell v. McCormack*, *supra*, 495 U.S. at 522; Amicus DCDC respectfully suggests Article III, § 8 of the Texas Constitution has no relevance in this case. The power of each House to ñJudge the qualifications of its Membersò under § 8 is constitutionally limited to a determination of whether a Representative-Elect has satisfied the citizenship, elector status, residence and age requirements contained in Texasô Article III, § 7.

3) ***Because of its Greater Adverse Impact on the "Fundamental Right" of the People to "Choose Whom They Please to Govern Them," the "Expulsion" of a Seated Representative under Section 11, Article III of the Texas Constitution Requires a Two-Thirds Vote of the House.***

Although the question before the U.S. Supreme Court in *Powell v. McCormack*, *supra*, involved ñexclusionò of seated Representative (and not the ñexpulsionò of a seated Representative), the Court did provide a fulsome survey of historical evidence that disclosed the original intent of the Framers who required a two-thirds vote in order to ñexpelò of a Member of either chamber of Congress. For example, the Court observed that when the Framers debated a proposal to empower each House to ñexpelò its members, James Madison argued that the right of expulsion ñwas too important to be exercised by a bare majority of a quorum:

and in emergencies [one] faction might be dangerously abused.ò *Id*., 495 U.S. at 536, *quoting* 2 Max Farrand, ed., *The Records of the Federal Constitutional Convention of 1787*, 254 (August 10, 1787) (New Haven: Yale University Press 1911). Additionally, in *Powell v. McCormack*, the Supreme Court expressly adopted the political philosophy of Alexander Hamilton when it more broadly ruled that ña fundamental principle of our representative democracy isé that the people should choose whom they please to govern them.ò *Id*., 495 U.S. at 547. In this connection, the Court further observed that, when balancing the legitimate interests of a functioning legislature against the rights of voters to choose their Representatives, the Framers, ñ[i]n apparent agreement withò Hamiltonôs ñbasic philosophy,ò ñadopted his suggestion limiting the power to expel.ò *Ibid*.

The foregoing discussion brings to the surface the need for a judicial examination in the present case of what, if any, Texas valid constitutional or statutory authority is possessed by Relator Abbott, and by Relator Paxton, to bring ñ*quo warranto*ò actions seeking to ñexpelò elected Members of the Texas House of Representatives. For the reasons stated below, it is apparent no such constitutional or statutory power exists.

4) ***When a Matter is "Committed" for Decision to the Legislature by Constitutional Text, the Legislature's Compliance with its Own Rules is Not an Issue Subject to Judicial Review.***

Apart from other regulations, Article III, § 11 of the Texas Constitution provides that ñEach House may determine the rules of its own proceedings.ò In an exercise of this constitutional power the House of Representatives of the 89th Texas Legislature adopted a rule concerning the circumstances presented in this case. Rule 5, § 3(d) of the House Rules provides:

> ñIf a member is absent without leave for the purpose of impeding the action of the house, the member is subject toé expulsion in the manner prescribed by Section 11, Article III, Texas Constitution.ò

With regard to the validity of rules governing legislative proceedings under Article I, § 5, cl. 2 of the U.S. Constitution (which parallels Article III, § 11 of the Texas Constitution) the U.S. Supreme Court has ruled:

> ñThe constitution empowers each house to determine its rules of proceedings. It may not by its rules ignore constitutional restraints or violate fundamental rights, and there should be a reasonable relation between the mode or method of proceeding established by the rule and the result which is sought to be attained. But within these limitations all matters of method are open to the determination of the house, and it is no impeachment of the rule to say that some other way would be better, more accurate, or even more just. It is no objection to the validity of a rule that a different one has been prescribed and in force for a length of time. *The power to make rules is*é *a continuous power, always subject to be exercised by the house, and, within the limitations suggested, absolute and beyond the challenge of any other body or tribunal*.ò
>
> *United States v. Ballin*, 144 U.S. 1, 5 (1892)

Arising from the fundamental concept of separation of powers between the Executive, Legislative and Judicial branches of the Constitution, the U.S. Supreme

Court in *Baker v. Carr*, 369 U.S. 186 (1962) subsequently established the ñtextual commitmentò doctrine. This doctrine operates to encompass, among other things, its prior ruling from *United States v. Ballin*, *supra*, wherein the Court determined ñthe power to make rulesò is generally ñabsolute and beyond the challenge of any other body or tribunal.ò *Id*., 144 U.S. at 5. Under the ñtextual commitmentò doctrine adopted by the Court in *Baker v. Carr*, adjudication of an issue by the Judicial Branch is constitutionally prohibited when ña textually demonstrable constitutional commitmentò of the issue has been expressly assigned ñto a coordinate political department.ò *Id*., 369 U.S. at 217.

The ñtextually constitutional commitmentò demonstrated by Texasô Article III, § 11, disallows judicial interference with the Texas Legislatureôs adoption of internal rules to govern ñits own proceedings.ò For the same reason, the power to ñexpelò a Member of the Texas House of Representatives with the consent of two-thirds of its Members, which is also expressly included within § 11, constitutes a ñtextually demonstrable constitutional commitmentò that is ñabsolute and beyond the challenge of any other body or tribunal,ò *United States v. Ballin*, *supra*, 144 U.S. at 5, including this Court and other tribunals within Texas Judicial Department. Accordingly, the Relators have no cause of action in the present case because this Court has no constitutional authority to grant the relief requested by Relators, *i.e*., ñexpulsionò of Representative Wu from the Texas Legislature.

5) ***In the Present Case, Assuming <u>Arguendo</u> No Separation of Powers Obstacle Forecloses the Relators' Petitions, the Complaints Alleged and the Relief Sought by Relators Abbott and Paxton, Concerning the Failure or Inability of the House of Representatives to Expel a Representative under House Rule 5 (3)(d), Would Require a Pleading Against the House itself, Not One Against an Individual Representative such as Representative Wu.***

To date, no action has been taken by the Texas House of Representatives of the 89th Legislature to invoke House Rule 5, § 3(d) or consider the expulsion of Representative Wu under Article III, § 11. It is clearly beyond the power of Representative Wu alone, as a single member of the House of Representatives, to invoke House Rule 5, § 3(d) and thereby expel himself by a ñtwo-thirdsò vote of the House of Representatives. Thus, under these circumstances, Relatorsô complaint lies solely with the Texas House of Representatives, and not with Representative Wu. Setting aside the obvious obstacles to Relatorsô claims arising under Texasô constitutional separation of powers provision (Article II, § 1); the Relatorsô failure to bring their action against the Texas House of Representatives itself requires dismissal of their petitions.

CONCLUSION

Article III, §§ 7 and 8 of the Texas Constitution have no bearing on any claim alleged by the Relators in the present case. Sections 7 and 8 of Article III of

the Texas Constitution govern the ñexclusionò of Representatives-Elect, not the ñexpulsionò of seated Representatives. When, as in the present cases, a subject matter has been ñcommittedò for decision to the Legislature by Constitutional text, the Legislatureôs compliance (or non-compliance) with its own rules is not an issue subject to judicial review. Finally, in the present cases, assuming *arguendo* no Separation of Powers obstacle foreclose the Relatorsô petitions; the complaints alleged and the relief sought by Relators Abbott and Paxton, concerning the failure or inability of the House of Representatives to expel a Representative under House Rule 5 (3)(d), would require a pleading against the House itself, not one against an individual Representative such as Representative Wu.

PRAYER

For the foregoing reasons, Amicus DCDC prays the Court will dismiss Relatorsô *quo warranto* petitions and deny Relators in any form of relief on the merits of their claims.

Respectfully submitted,

/s/Richard Gladden
State Bar No. 07991330
Law Office of Richard Gladden
1204 West University Dr., Ste. 307
Denton, Texas 76201-1901
940/323-9300 (voice)
richscot1@hotmail.com (email)
Attorney for Amicus Curiae
Denton County Democratic Club

CERTIFICATE OF COMPLIANCE

This is to certify that this brief was computer-generated; that it contains less than 4,040 words; and that it therefore complies with the 15,000 word limitation stated in Rule 9.4(i)(2)(B) of the Texas Rules of Appellate Procedure.

/s/Richard Gladden

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This is to certify that on this 27th day of August, 2025, in accordance with Rules 9.5 and 11(d) of the Texas Rules of Appellate Procedure, a true correct copy of this brief was served electronically using the E-File Texas service system, on all parties to this cause, by and through their Counsel of Record.

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Scott Brazil		scott@brazilanddunn.com	8/27/2025 10:50:48 PM	SENT
Justin Nelson	24034766	jnelson@susmangodfrey.com	8/27/2025 10:50:48 PM	SENT
Maria Williamson		maria.williamson@oag.texas.gov	8/27/2025 10:50:48 PM	SENT
Jonathan F.Mitchell		jonathan@mitchell.law	8/27/2025 10:50:48 PM	SENT
Wolfgang pHirczy de Mino		wphdmphd@gmail.com	8/27/2025 10:50:48 PM	SENT
Wolfgang P.Hirczy de Mino		wphdmphd@gmail.com	8/27/2025 10:50:48 PM	SENT
William FCole		William.Cole@oag.texas.gov	8/27/2025 10:50:48 PM	SENT
Gwen Kelly		gwen@brazilanddunn.com	8/27/2025 10:50:48 PM	SENT
William Peterson		william.peterson@oag.texas.gov	8/27/2025 10:50:48 PM	SENT
Chad Dunn		chad@brazilanddunn.com	8/27/2025 10:50:48 PM	SENT
Jonathan Fombonne		jonathan.fombonne@harriscountytx.gov	8/27/2025 10:50:48 PM	SENT
Christopher Garza		Christopher.Garza@harriscountytx.gov	8/27/2025 10:50:48 PM	SENT
Jesse Blakley		Jesse.Blakley@harriscountytx.gov	8/27/2025 10:50:48 PM	SENT
Eleanor Matheson		eleanor.matheson@harriscountytx.gov	8/27/2025 10:50:48 PM	SENT
Tiffany Bingham		tiffany.bingham@harriscountytx.gov	8/27/2025 10:50:48 PM	SENT
Trevor Ezell		trevor.ezell@gov.texas.gov	8/27/2025 10:50:48 PM	SENT
Amy Ruzicka		amy.ruzicka@gov.texas.gov	8/27/2025 10:50:48 PM	SENT
Gene Wu		gene.wu@house.texas.gov	8/27/2025 10:50:48 PM	SENT
Jeri Hamman		jeri.hamman@solidcounsel.com	8/27/2025 10:50:48 PM	SENT
Dana Orsini		dana.orsini@solidcounsel.com	8/27/2025 10:50:48 PM	SENT
Mitch Little		mitch.little@solidcounsel.com	8/27/2025 10:50:48 PM	SENT
Amy Warr		awarr@adjtlaw.com	8/27/2025 10:50:48 PM	SENT
Mimi Marziani		mmarziani@msgpllc.com	8/27/2025 10:50:48 PM	SENT

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Case Contacts

Mimi Marziani		mmarziani@msgpllc.com	8/27/2025 10:50:48 PM	SENT
Beth Stevens		bstevens@msgpllc.com	8/27/2025 10:50:48 PM	SENT
Jonathan F.Mitchell		jonathan@mitchell.law	8/27/2025 10:50:48 PM	SENT
John B.Scott		john.scott@scottpllc.net	8/27/2025 10:50:48 PM	SENT
Katy Peaslee		kpeaslee@susmangodfrey.com	8/27/2025 10:50:48 PM	SENT
Joaquin Gonzalez		gonzalez@msgpllc.com	8/27/2025 10:50:48 PM	ERROR