**Nos. 25-0674, 25-0687**

# In the Supreme Court of Texas

*In re* STATE OF TEXAS,
*Relator.*

*In re* GREG ABBOTT, IN HIS OFFICIAL CAPACITY AS GOVERNOR OF THE STATE OF TEXAS,
*Relator.*

## REPLY BRIEF ON THE MERITS FOR THE STATE OF TEXAS

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# Table of Contents

Page

## Index of Authorities

Page(s)

**Cases:**

**Constitutional Provisions, Statutes, and Rules:**



**Other Authorities**

## Argument in Reply

Four years ago, this Court explained that the Texas Constitution's quorum-forcing provision is "one of the foundational constitutional rules governing the law-making process in Texas." *In re Abbott*, 628 S.W.3d 288, 292 (Tex. 2021) (orig. proceeding). This provision "protects against efforts by quorum-breakers to shut down legislative business," ensuring "that the legislature can continue to do business despite efforts by a minority faction to shut it down by breaking quorum." *Id.* at 297. It thus reflects the fact that our Constitution does not impose a "supermajoritarian check on the legislature's ability to pass legislation opposed by a minority faction." *Id.*

Respondents do not deny that their actions upset this "careful balance," putting a thumb on the scale for quorum-breaking. Respondents not only refused to attend the first Special Session, thus denying the Legislature a quorum to conduct business, but by fleeing the State they sought to negate the constitutional quorum-forcing powers of the remaining members. Put simply, if Respondents are right, then this Court was wrong in *In re Abbott*: Article III, section 10 does not ensure "that the legislature can continue to do business," and a minority faction can impose a "supermajoritarian check on the legislature" by fleeing the State. *Id.*

This Court should reaffirm its holding in *In re Abbott* by declaring that when Respondents refused to attend the Special Session and fled the State to avoid the quorum-forcing powers of the remaining members, they vacated their offices under longstanding common-law principles of refusal and misuse. The Texas Constitution and statutes authorize this Court to issue writs of quo warranto against Respondents as officers of state government, and doing so is proper under these circumstances.

## I. This Court Should Exercise Its Original Jurisdiction to Issue Writs of Quo Warranto.

The Texas Constitution and Government Code give this Court original jurisdiction to issue writs of quo warranto against "any officer of state government," Tex. Gov't Code § 22.002(a), including Respondents. No party denies that the Attorney General has authority to seek this writ on behalf of the State.[1] The importance of the issue warrants this Court's exercise of original jurisdiction without first requiring presentation in the lower courts.

### A. This Court has jurisdiction to issue writs of quo warranto against Respondents.

Fifteen years after the adoption of the Constitution of 1876, the People of Texas amended the Constitution to authorize the Legislature to grant this Court original jurisdiction to issue writs of quo warranto. Tex. Const. art. V, § 3. The Texas Constitution does not place any limits—aside from excluding the Governor—on this Court's original jurisdiction to issue these writs.

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[1] As detailed in the State's opening brief, because the State and the Governor both seek a declaration that Representative Wu's office is vacant, it is unnecessary for this Court to address the Governor's standing. State Merits Br. 9. What matters is the relief sought, not as Respondents suggest (at 71-72) the State's and the Governor's arguments.

Because Texas does not have a unitary executive, the State respectfully disagrees with the Governor's assertion (at 29-30) that he has authority to direct litigation on behalf of the State. The State sees no reason that this Court needs to address that argument; but if this Court disagrees, the State would welcome the opportunity to file supplemental briefing regarding the structure of Texas's Executive Department.

The following year, the Legislature exercised that power, granting this Court jurisdiction to issue "all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, 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); *see* Act of Apr. 13, 1892, 22d Leg., 1st C.S., ch. 14, § 1, art. 1012, 1892 Tex. Gen. Laws 19, 21.

Although the common law provides the standard for issuance of the writ, this statutory provision provides this Court with jurisdiction to issue the writ against Respondents.

### 1. Respondents are "officer[s] of state government" within the meaning of Government Code section 22.002(a).

As the State detailed in its opening brief (at 18-22), this Court has jurisdiction to issue writs of quo warranto declaring Respondents' offices vacant because Respondents are "officer[s] of state government" within the meaning of section 22.002(a). The Constitution of 1876, time and again, refers to legislators as state officers. *See* State Merits Br. 19-20; *see, e.g.*, Tex. Const. art. XVI, §§ 40(d), 72. Most obviously, each Respondent swore an oath to "faithfully execute the duties of the office of [State Representative] of the State of Texas." Tex. Const. art. XVI, § 1(a); Floyd R. Mechem, *A Treatise on the Law of Public Offices and Officers* § 2, at 4 (Chi., Callaghan & Co. 1890) ("The officer is distinguished from the employee . . . in being required to take an official oath[.]" (quoting *People ex rel. Throop v. Langdon*, 40 Mich. 673, 682 (1879))). The occupant of the office of State Representative is, necessarily, an "officer of state government."

Respondents' brief does not address the language of the Texas Constitution discussed above, which demonstrates that Respondents, as State Representatives, are "officer[s] of state government." *See* Resp. Merits Br. 59-62. Because the text of the Constitution makes Respondents "officer[s] of state government," this Court need not turn to other tests.

But even if it did, Respondents are officers under this Court's precedent. An "officer" is a person upon whom the "sovereign function of the government is conferred . . . to be exercised by him for the benefit of the public largely independent of the control of others," *Green v. Stewart*, 516 S.W.2d 133, 135 (Tex. 1974) (quoting *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955)). As State Representatives, Respondents exercise the legislative power of the State at the highest level, without any control by others, so they would qualify as "officers."

Respondents' contrary argument (at 60-61) relies almost entirely on cases involving members of the Executive and Judicial Departments. *See In re Nolo Press/Folk L., Inc.*, 991 S.W.2d 768, 776 (Tex. 1999) (orig. proceeding) (denying mandamus against members of the Unauthorized Practice of Law Committee); *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 672 (Tex. 1995) (permitting mandamus against the Comptroller, "an executive officer named by the constitution"); *Betts v. Johnson*, 73 S.W. 4, 4-5 (Tex. 1903) (denying mandamus against the Board of Eclectic Medical Examiners because mandamus was sought "against a board of officers, and not against an officer"). These cases merely confirm that constitutional officers fall within this Court's original-writ jurisdiction.

Respondents' attempt (at 60-61) to analogize elected legislators to appointed members of an executive-branch board fails for the reasons previously discussed: State legislators, unlike board members, exercise a portion of the sovereign function of the government for the benefit of the public and independent of the control of others. *Green*, 516 S.W.2d at 135.

The sole case Respondents cite involving a legislator, *Diffie v. Cowan*, supports the State. 56 S.W.2d 1097 (Tex. App.—Texarkana 1932, no writ). There, the Texarkana Court of Appeals relied on a city charter that distinguished aldermen from "officers of the city." *Id.* at 1101-02 (explaining that the term "'officer' is used in the charter in peculiar distinction to denominate and include all persons in the service of the city who have to do only with the execution or administration of the laws" and noting the "clear distinguishment" between "officers of the City" and aldermen). By contrast, the Texas Constitution not only fails to distinguish between representatives and officers of state government but confirms that legislators fall within this category.

The Texas Constitution characterizes legislators as officers of state government, and this Court's precedent leads to the same conclusion. By enacting the predecessor to section 22.002(a), the Legislature granted this Court original jurisdiction to issue writs of quo warranto against legislators.

### 2. Respondents err by relying on common-law authority to attempt to overcome this Court's statutory authority to issue the writ.

Because section 22.002(a) authorizes this Court to issue writs of quo warranto against legislators, whether the common law would have authorized writs against legislators is irrelevant. Even so, Respondents' historical discussion is incorrect.

**a.** Respondents discuss at length whether quo warranto extended to legislators at common law (at 48-59), but the statutory authorization in section 22.002(a)—which provides this Court with original jurisdiction to issue the writ against "*any* officer of state government"—controls. Tex. Gov't Code § 22.002 (emphasis added); *see, e.g.*, *Levinson Alcoser Assocs., L.P. v. El Pistolon II, Ltd.*, 670 S.W.3d 622, 627 (Tex. 2023) ("Where the common law is revised by statute, the statute controls." (quoting *Tex. Workers' Comp. Ins. Fund v. DEL Indus., Inc.*, 35 S.W.3d 591, 596 (Tex. 2000))).

Respondents are therefore wrong to assert (at 58), without explanation or analysis, 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." Section 22.002(a) provides such authorization.

**b.** Nor is Respondents' reliance on the common law correct. They fail to recognize the differences between the structure of English and American governments, which affect the proper use of the writ.

Most significantly, Texas does not recognize parliamentary supremacy. In England, quo warranto could only be brought by the crown "to vindicate the rights of the Crown." *Darley v. The Queen*, (1893) 8 Eng. Rep. 1513, 1517, 12 Cl. & Fin. 520,

530. As a result, the writ applied only to "those offices which [were] grantable by the Crown." *The King v. Beedle*, (1834) 111 Eng. Rep. 491, 494, 3 Ad. & E. 467, 473. But the crown's offices did not include Parliament.[2] After all, Parliament was considered "so transcendent and absolute that it could not be confined within any bounds." 1 Blackstone, *Commentaries* *156 (cleaned up). It, "being in truth the sovereign power," was "always of absolute authority" and "acknowledge[d] no superior upon earth." *Id.* at *90. And it could "change and create afresh even the constitution," prompting some people to call its power "the omnipotence of parliament." *Id.* at *156. Texas, with a constitution providing for limited powers and independent departments, lacks any concept of parliamentary supremacy. This Court would err by treating the Legislature as equivalent to Parliament and affording it the same legal status.

Regardless, the king could exercise significant control over Parliament through the writ of quo warranto. Although the king could not bring a quo warranto action directly against a member of Parliament, he could do so indirectly.

*First*, because most members of Parliament had to hold an office of the crown to be eligible to serve in Parliament, the king could bring a quo warranto action based on the member's usurpation of the crown's office. *E.g.*, *The King v. Warlow*, (1813)

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[2] Only judges of the King's Bench, who themselves had judicial immunity, *see Pulliam v. Allen*, 466 U.S. 522, 532-36 (1984), could issue writs of quo warranto, *see* 3 William Blackstone, *Commentaries* *262-63. As a result, judges were not ordinarily subject to quo warranto, although judicial officers, such as bailiffs, were. *See, e.g.*, *The King v. M'Kay*, (1826) 108 Eng. Rep. 238, 239, 5 B. & C. 638, 640.

105 Eng. Rep. 310, 310, 2 M. & S. 75, 75; *see* J.S. Roskell, *The Composition of the House of Commons*, *in The History of Parliament: The House of Commons 1386-1421* (J.S. Roskell et al. eds., 1993). For example, although a burgess serving in the House of Commons could not usurp his parliamentary seat, he could usurp the office of burgess. *See, e.g.*, *Warlow*, 105 Eng. Rep. at 310, 2 M. & S. at 75. And once he forfeited his office of burgess—through the writ of quo warranto—he could no longer serve in Parliament.

*Second*, in the House of Commons, the king could bring a quo warranto action against the charter of the borough that elected a member of Parliament, which would revoke the borough's right to send burgesses to Parliament and so eliminate the member's seat. *See* James L. High, *Treatise on Extraordinary Legal Remedies, Embracing Mandamus, Quo Warranto, and Prohibition* § 601, at 432-33 (Chi., Callaghan & Co. 1874). In so doing, the king could reduce the size and composition of Parliament down to those members who were loyal to him. Charles II famously did this to over 80 cities and boroughs in the years leading up to the Glorious Revolution of 1688, *id.*; *see, e.g.*, *The King v. City of London*, 8 How. St. Tr. 1039, 1039-1358 (1682), which prompted later statutory reforms of quo warranto, High, *supra*, § 601, at 432-33.

In America, however, such "flagrant . . .abuse[s]" of power, *id.* § 601, at 432, are prohibited by constitutional separation-of-powers principles. Those same principles also "structural[ly] depart[] from the English system of parliamentary supremacy," *United States ex rel. Polansky v. Exec. Health Res., Inc.*, 599 U.S. 419, 450 (2023) (Thomas, J., dissenting), by which Parliament was above the law, including the law of quo warranto. As a result, in America, quo warranto can lie against legislators at

the state level in addition to those at the local level. *Compare Rex v. Mayor & Aldermen of Hertford*, (1699) 91 Eng. Rep. 328, 328, 1 Salk. 376, 376 (quo warranto against local legislator), *with State ex rel. James v. Reed*, 364 So.2d 303, 307-08 (Ala. 1978) (per curiam); *State ex rel. Jones v. Lockhart*, 265 P.2d 447, 450, 454 (Ariz. 1953); *and State ex rel. Muirhead v. State Bd. of Election Comm'rs*, 259 So. 2d 698, 702 (Miss. 1972) (deciding merits).

That is true not only because of separation-of-powers principles but also because quo warranto is brought against those who infringe on "a portion of the [State's] sovereignty," High, *supra*, § 625, at 454, which now lies in the People, *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 404-05 (1819). So in this country, "the prosecution [of a quo warranto] runs in the name of the people"—not the king. 1 J.C. Wells, *A Treatise on the Jurisdiction of Courts* § 456, at 458 (St. Paul, West Publishing 1880). And as a result, a quo warranto will lie against a legislative "officer of state government." Tex. Gov't Code § 22.002(a).

Respondents also overstate the American cases on which they rely. *See* Resp. Merits Br. 49-51. Read carefully, these cases merely stand for the proposition that courts will respect constitutional provisions that designate legislative bodies as the judges "of the qualifications and election of [their] own members." Tex. Const. art. III, § 8.

Thus, when a party—unlike the State in this proceeding, *see infra* at Section II.A—seeks to challenge the qualifications of legislator that fall within a constitution's exclusive grant of authority to a legislature, quo warranto will not lie. *See Rainey v. Taylor*, 143 S.E. 383, 384 (Ga. 1928) ("[W]e are satisfied that the ground

upon which the plaintiff seeks to oust the respondent as a member of the General Assembly is based upon the disqualification of the member in the light of the meaning which must be given to the two paragraphs of the Constitution referred to above."); *State ex rel. Biggs v. Corley*, 172 A. 415, 420 (Del. 1934) (discussing acceptance of an incompatible office); *Covington v. Buffett*, 45 A. 204, 205 (Md. 1900) (same). The same is true of election disputes entrusted to a legislature. *See State ex rel. Attorney Gen. v. Tomlinson*, 20 Kan. 692, 703 (1878); *In re Op. of the Justs.*, 56 N.H. 570, 573 (1875); *State ex rel. Ford v. Cutts*, 163 P. 470, 470 (Mont. 1917) (per curiam) (examining whether a vacancy was properly filled).[3]

As detailed in its opening merits brief and below, the State's petition does not challenge Respondents' "qualifications" or "election[s]" as State Representatives—it argues only that they have lost their offices through misuse, non-use, or refusal. These arguments are not entrusted by the Texas Constitution exclusively to the Legislature, and because Respondents are state officers within the meaning of section 22.002(a), this Court has jurisdiction to issue the writs against them.

### B. This Court should exercise its original jurisdiction.

This Court should exercise its original jurisdiction to issue the writs without first requiring presentation to the lower courts. This proceeding "involves questions which are of general public interest and call for a speedy determination." *In re*

[3] *Alexander v. Pharr*, 103 S.E. 8, 8 (N.C. 1920) (per curiam), appears to fit within this category based on its citation to *Britt v. Board of Canvassers of Buncombe County*, 90 S.E. 1005, 1007 (N.C. 1916).

*Occidental Chem. Corp.*, 561 S.W.3d 146, 155 (Tex. 2018) (orig. proceeding) (quoting *Love v. Wilcox*, 28 S.W.2d 515, 519 (Tex. 1930) (orig. proceeding)).

This petition concerns a core question regarding the organization and operation of Texas government: Can a legislative minority flee the State to deprive the Legislature of a quorum to conduct business and to nullify the quorum-forcing powers of the remaining members? If Respondents are correct, then fleeing the State is a legitimate tactic to "impose an absolute supermajoritarian check on the legislature's ability to pass legislation opposed by a minority faction." *In re Abbott*, 628 S.W.3d at 297. If the State is correct, then Respondents must remain in the State (and subject to the quorum-forcing powers of the remaining members) during legislative sessions, thus ensuring that "the legislature can continue to do business despite efforts by a minority faction to shut it down by breaking quorum." *Id.* Either way, the public should understand how their government operates before the issue arises again.

Respondents contend that this Court lacks jurisdiction because "jurisdiction requires a 'genuine, concrete, and tangible' dispute and cannot rest on 'speculative, contingent, or hypothetical' events." Resp. Merits Br. 22 (quoting *Tex. Dep't of Fam. & Protective Servs. v. Grassroots Leadership, Inc.*, No. 23-0192, 2025 WL 1642437, at *12 (Tex. May 30, 2025)); *see id.* at 23 (arguing that "jurisdiction cannot hinge on the possibility that the same 'offense' may be repeated").

This Court's jurisdiction is not at issue. Section 22.002(a) provides this Court with jurisdiction to issue writs of quo warranto. The question is whether this Court should exercise its "discretion to decide this matter without first requiring presentation to the district court." *State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489, 490

(Tex. 1996) (orig. proceeding). That exercise of discretion is governed by this Court's judgment, not jurisdictional rules.

The urgent need for resolution remains: If the State is correct, then Respondents vacated their offices and "should know their status as soon as possible." *See id.* Indeed, as Respondents acknowledge (at 26), this Court's decision to grant the requested relief would require special elections to fill the vacant offices, which should occur as soon as possible.

Moreover, the relevant facts are undisputed. None of the Respondents' fact issues "is involved in resolving the dispositive legal question." *In re Occidental Chem. Corp.*, 561 S.W.3d at 157. Respondents focus on intent to remain in office, but as detailed below, *see infra* Section II.B.1, their arguments conflate abandonment as implied resignation with the State's actual arguments based on abandonment through refusal and misuse.

The State's arguments do not depend on Respondents' intent not to be representatives but rather on their conduct. The relevant facts are undisputed: Respondents fled the State, deprived the Legislature of a quorum, and avoided the quorum-forcing powers of the remaining members. The legal question whether these acts justify issuance of writs of quo warranto declaring the offices vacant is ready for resolution by this Court.

### C. Granting this petition does not violate Respondents' right to a jury trial.

Because the relevant facts in this case are undisputed, there is no need for a jury trial, *see Crawford v. State*, 153 S.W.3d 497, 507 (Tex. App.—Amarillo 2004, no pet.)

(explaining that there is no right to a jury trial in "the absence of a controverted issue of fact"), and thus no need for the Court to make a general pronouncement about the right to a jury trial in quo warranto actions, State Merits Br. 25-27. But even if the Court were to address this issue more broadly, quo warranto proceedings are not analogous to any cases or causes that were historically tried by jury either "at common law or by statute" in Texas "at the time of the adoption of the Constitution." *White v. White*, 196 S.W. 508, 512 (Tex. 1917) (citation omitted). Respondents argue (at 33) that quo warranto "is a well-established common-law cause of action," but they cite no case demonstrating that such actions were historically tried to a jury. *See* State Merits Br. 25-26. Indeed, several other state supreme courts have held to the contrary. *See id.* at 26.

And by permitting original jurisdiction in this Court, *see Paxton v. Annunciation House*, No. 24-0572, 2025 WL 1536224, at *7 (Tex. May 30, 2025), the Texas Constitution appears to contemplate "a determination by the court alone without the intervention of a jury," *State ex rel. McKittrick v. Williams*, 144 S.W.2d 98, 105 (Mo. 1940); *see also* State Merits Br. 26-27 (discussing other States).

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This Court has jurisdiction to issue writs of quo warranto against Respondents as officers of the State. Tex. Gov't Code § 22.002(a). Exercising that jurisdiction without first requiring presentation to a lower court is appropriate.

## II. This Court Should Declare That Respondents Have Vacated Their Offices as State Representatives.

Exercising its original jurisdiction, this Court should issue writs of quo warranto declaring Respondents' offices vacant.

### A. Declaring Respondents' offices vacant reinforces the separation of powers and presents no nonjusticiable political question.

Far from undermining the separation of powers, a declaration by this Court that Respondents' conduct has resulted in a vacatur of their offices under longstanding common-law principles would vindicate that doctrine. As the State has explained, it sought writs of quo warranto only after Respondents fled the State to deprive the House of Representatives of a quorum to do business and simultaneously place themselves beyond the reach of the House's constitutional authority to compel their attendance through arrest. State Merits Br. 42-45. Not only did that conduct thwart the House's constitutional authority under article III, section 10, but it more broadly halted all legislative activity in the House and forced an early end to the first Special Session, Supp.QWR.215, which is constitutionally limited to thirty days, *see* Tex. Const. art. III, § 40.

An order from this Court confirming that Respondents' actions vacated their seats would restore "the constitution's balance between the quorum-breaking ability of the minority and the quorum-forcing power of the remaining members," *In re Abbott*, 628 S.W.3d at 298, and ensure "that the legislature can continue to do business despite efforts by a minority faction to shut it down by breaking quorum," *id.* at 297.

Respondents offer several rejoinders, running them through both political-question and separation-of-powers frameworks. But none should carry the day.

**1.** Start with Respondents' political-question objection. "When the constitution commits a particular decision to the discretion of a coordinate branch of government, judicial second-guessing of the decision raises grave separation-of-powers concerns." *Id.* at 294 n.8. "For this reason, '[t]o 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." *Id.* (alterations in original) (quoting *Am. K-9 Detection Servs. LLC v. Freeman*, 556 S.W.3d 246, 249 (Tex. 2018)). To make this determination, this Court chiefly considers "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) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)). Neither factor applies.

Respondents argue (at 41-42) that the Constitution commits the decision whether they have vacated their offices to the Legislature by authorizing each House to, "with the consent of two-thirds, expel a member," Tex. Const. art. III, § 11, and determine the "penalties" needed to "compel the attendance of absent members," *id.* art. III, § 10. But the writ of quo warranto is an ancient, common-law writ that is issued by *the judiciary* and that this State adopted, and then constitutionalized, as its "rule of decision" from its early days as a Republic. *Annunciation House*, 2025 WL 1536224, at *5. *See generally* State Merits Br. 12-17. Contrary to Respondents' argument, a Court's determination that an office has been "forfeited or lost through misuser or nonuser," is not one that has been textually committed to the Legislature; as

this Court long ago confirmed, it "belongs to the judiciary." *Honey v. Graham*, 39 Tex. 1, 11 (Tex. 1873); *see also Annunciation House*, 2025 WL 1536224, at *7 ("[T]he Texas Constitution and state law currently authorize *direct* actions seeking a writ of quo warranto in this Court[.]").

For related reasons, Respondents err by arguing (at 42) that no judicially manageable standards exist for determining whether their conduct has resulted in vacatur of their offices. The State discussed those standards at length in its opening brief. State Merits Br. 27-37. Contrary to Respondents' argument, this determination does not call for a court's "resolution of questions of legislative judgment concerning attendance, absence, . . . and subjecting oneself to arrest" or "examination of the methods by which legislators further their opposition to controversial legislation," or refereeing disputes "about the best way to effectuate duties, serve constituents, prompt compromise and spread awareness." Resp. Merits Br. 42. Instead, it calls for this Court to apply longstanding common-law principles to determine whether Respondents' conduct constitutes misuser, non-user, or refusal—a quintessentially judicial task.

**2.** Respondents' separation-of-powers argument fares no better. Under the Separation of Powers Clause, if "one branch seeks to seize power belonging solely to another, the constitutional implication is obvious—the offending branch's claim is invalid." *Webster v. Comm'n for Law. Discipline*, 704 S.W. 3d 478, 487 (Tex. 2024). "But 'separation-of-powers disputes' often arise when '*none* of the [competing constitutional] claims, at least when viewed in isolation, is invalid.'" *Id.* (alteration in original) (quoting *In re Tex. House of Representatives*, 702 S.W.3d 330, 340 (Tex.

2024)). "Quite commonly, '[e]ach of the multiple claims of power at issue' is 'valid and entitled to respect,' requiring the Court 'to ensure that no branch is exercising its core authority in a way that negates the ability of a coordinate branch to do so." *Id.* at 487-88 (alteration in original) (quoting *In re Tex. House*, 702 S.W.3d at 340, 344). In such circumstances, the court must "determine whether a coordinate branch's exercise of power . . . 'rise[s] to the level of constitutionally forbidden impairment of [another branch's] ability to perform its [powers]." *Id.* at 489 (alteration in original) (quoting *Clinton v. Jones*, 520 U.S. 681, 699-703 (1997)).

Respondents point to four constitutional provisions upon which they claim this Court would improperly intrude—and thereby violate the Separation of Powers Clause—by granting the State's petition.

*First*, Respondents primarily point (at 41-42, 47) to article III, section 10, which authorizes the Legislature to "compel the attendance of absent members, in such manner and under such penalties as each House may provide." As Respondents see it, this Court in *In re Abbott* held that quorum-breaking is constitutionally protected when it acknowledged that the Compulsion of Attendance Clause enables quorum-breaking. Respondents have it backwards. True, this Court acknowledged that the Constitution "enables quorum breaking by a minority faction." *In re Abbott*, 628 S.W.3d at 297. But the Court then explained that the Constitution "also enables the remaining members to 'compel the attendance of absent members.'" *Id.* (quoting Tex. Const. art. III, § 10). Instead of privileging quorum-breaking, the Constitution favors quorum-forcing: "Section 10 represents a conscious decision by those who framed our constitution to *counter-balance* the minority's quorum-breaking ability

with a quorum-forcing authority vested in the present members." *Id.* at 298 (emphasis added). Section 10 ensures "that the legislature can continue to do business despite efforts by a minority faction to shut it down by breaking quorum" and avoid "an absolute supermajoritarian check on the legislature's ability to pass legislation opposed by a minority faction." *Id.* at 297.

Respondents also argue (at 41-42) that granting the State's petition would trample on the House's authority to determine the "penalties" that are necessary to compel the attendance of absent members. *See* Tex. Const. art. III, § 10. Yet declaring that Respondents vacated their offices would not penalize them for purposes of compelling their attendance—the prophylactic power that section 10 reserves to each House.[4] Moreover, Respondents fail to grapple with the fact that, by fleeing the State to deny the House the power to compel their attendance, Respondents rendered that power illusory.

It would present a more difficult separation-of-powers question if the State sought writs of quo warranto while Respondents remained within the State and thus the remaining members possessed the power to compel their attendance. But under the unique circumstances present here—a minority faction expressly acting to

[4] Respondents say (at 44) that 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." But there is no oddity: As this Court explained in *Honey*, a judicial declaration of a vacancy is a prerequisite to creating a vacancy that may be filled by gubernatorial appointment or election. *See* 39 Tex. at 10-11.

disable the Legislature's power to compel absent members (and succeeding, thus resulting in the early end to the first Special Session)—the separation of powers would be strengthened if this Court issues writs of quo warranto to restore the Legislature's constitutional authority.

*Second*, Respondents suggest (at 45, 47) that granting the State's petition would usurp the Legislature's prerogative to expel members. *See* Tex. Const. art. III, § 11. But again, this remedy is of little help where, as here, Respondents fled the State to deny a quorum and thus prevented the Legislature from exercising this power. *See* State Merits Br. 43-44. Respondents' only rejoinder (at 47) is that quorum-breaking is part of the "constitutional balancing" that this Court blessed. Yet as explained, that argument misreads *In re Abbott*. *See supra* Section II.A.

Moreover, there is no reason that expulsion would be the *exclusive* remedy for Respondents' conduct. In the same way that this Court's sister courts have held that impeachment and quo warranto may coexist, *e.g.*, *State ex rel. King v. Sloan*, 253 P.3d 33, 35-36 (N.M. 2011) (per curiam); *State ex rel. Blankenship v. Freeman*, 440 P.2d 744, 752-53 (Okla. 1968); *State ex rel. Dalton v. Mosley*, 286 S.W.2d 721, 722 (Mo. 1956); *State ex rel. De Concini v. Sullivan*, 188 P.2d 592, 598 (Ariz. 1948) (per curiam); *State ex rel. McIntyre v. McEachern*, 166 So. 36, 39 (Ala. 1936), so too may the Legislature's expulsion power and the judiciary's quo warranto power operate harmoniously.

*Third*, Respondents briefly argue (at 43, 69) that issuing the writ would violate the Qualifications Clause, which sets forth four prerequisites for a representative to hold office: U.S. citizenship, being a qualified voter, residency, and age. Tex. Const.

art. III, § 7. Respondents do not dispute that the State's quo warranto puts none of these qualifications at issue. *See* State Merits Br. 43. Instead, Respondents contend (at 69) that the State's petition would "add abstention from quorum breaking to the list of qualifications to hold office as a state representative." Not so.

For one thing, "abstention from quorum breaking" is not in any sense a "qualification"—that is, a "qualit[y] or propert[y] (such as fitness or capacity) inherently or legally necessary to make one eligible for a position or office." *Qualification*, *Black's Law Dictionary* (12th ed. 2024). Quorum-breaking by fleeing the State is instead *conduct* (not a quality or property) that causes an officeholder to vacate the office. Granting the State's petition for quo warranto no more infringes upon the Qualifications Clause than the Expulsion Clause does. Tex. Const. art. III, § 11. Each one regulates a Representative's conduct, not his qualifications.

*Fourth*, Respondents err by arguing (at 69-70) that granting the State's petition would run afoul of article III, section 4, because it would unlawfully shorten their two-year terms. This argument proves too much. If Respondents were correct, the Legislature itself could not expel any representative. But section 7 confirms that Respondents' maximalist interpretation cannot be correct. *Cf.* Supp.QWR.204-14 (expelling a State Representative for sexual misconduct before the conclusion of his two-year term). Nor do Respondents supply any reason to think that, by adopting section 4, the People meant to displace the ancient common-law writ of quo warranto. *See Annunciation House*, 2025 WL 1536224, at *5. To the contrary, the opposite presumption is warranted. *See id.*; *see also Am. Nat'l Ins. Co. v. Arce*, 672 S.W.3d 347, 365 & n.3 (Tex. 2023) (Young, J., concurring).

## B. Applying longstanding common-law principles, this Court should declare Respondents' offices vacated.

### 1. Misuser, non-user, and refusal result in forfeiture, regardless of whether the officeholder intends to relinquish the office.

As the State detailed in its opening brief, *see* State Merits Br. 28-34, under the common law, "public officials lose their offices through misuse, non-use, and refusal," *id.* at 28. Mechem describes these as a form of "abandonment." *See* Mechem, *supra*, § 432, at 276 (explaining that "abandonment may be evidenced by a variety of acts and events," including "by refusing or neglecting to perform the duties" of an office). The State contends that Respondents vacated their offices through refusal and misuse. State Merits Br. 38-39.

Respondents argue (at 27) that abandonment "turns on facts, including the Legislators' intent," and (at 28) that this "Court requires 'unequivocal evidence of the voluntary rejection or resignation of the office.'"

But this argument conflates two different means of vacating an office. *See* State Merits Br. 33-37 (distinguishing "abandonment" as used in Mechem's treatise from "abandonment" as used in *Honey*); *see also Steingruber v. City of San Antonio*, 220 S.W. 77, 78 (Tex. Comm'n App. 1920, judgm't adopted) ("Abandonment is a species of resignation."). As this Court recognized in *Honey*, "a right may be forfeited or lost by a nonuser or misuser, though the party continue[s] to assert it." 39 Tex. at 16. Respondents' reliance on their intent to remain representatives is unavailing.

### 2. Under common-law principles, Respondents forfeited their offices through refusal.

Respondents are constitutionally required to meet "when convened by the Governor," Tex. Const. art. III, § 5(a), and they owe their constituents a duty to participate in legislative sessions, *see In re Ford Motor Co.*, 165 S.W.3d 315, 322 (Tex. 2005) (per curiam) (orig. proceeding). Yet after Respondents received the Governor's request to attend the first Special Session, they refused. And after they received the Speaker's further request (indeed, command in the form of arrest warrants) to attend, they still refused—going so far as to flee the State.

By refusing to perform their duties, Respondents "removed themselves from office." *City of Williamsburg v. Weesner*, 176 S.W. 224, 226 (Ky. 1915). Those offices remain vacant even though Respondents have now returned to the State and purported to resume their duties. After all, it has long been the rule that when "the vacancy has once become complete by the abandonment of the officer, it can not be resumed by him, nor can he again possess himself of it by an accidental, voluntary or forcible reoccupancy." Mechem, *supra*, § 440, at 281 (footnotes omitted).

Respondents contend (at 44) that "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." Not so. Respondents describe the State's argument incorrectly: Quorum-breaking while remaining *within* Texas would not necessarily be grounds for forfeiture of office because the absent legislators would remain subject to the remaining members' quorum-forcing powers. It is the evasion of those powers—and the upsetting of the constitutional balance recognized in *In re*

*Abbott*—that justifies issuing the writ; and as *Honey* makes clear, Respondents' forfeiture requires a judicial determination. 39 Tex. at 16.

Moreover, at common law, an official forfeited his office based on his refusal to exercise it when he was "bound upon request to exercise his office," a request was made, and he subsequently failed to exercise the office. *The Earl of Shrewsbury's Case*, (1611) 77 Eng. Rep. 798, 805, 9 Co. Rep. 46b, 50b. So here, the fact that Respondents ignored both the Governor's and the Speaker's requests to attend the Special Session and remained outside the State after the House exhausted its ability to compel their attendance, *see* State Merits Br. 3, 6, warrants the conclusion that Respondents refused to exercise their offices.

It is therefore irrelevant whether Respondents spent their time raising "awareness about redistricting" or responding to constituent requests while absent. Resp. Merits Br. 29-30. The Texas Constitution imposes an unambiguous duty upon Respondents: They must "act upon" bills and "such emergency matters as may be submitted by the Governor." Tex. Const. art. III, § 5(b). Respondents refused to perform *that* duty, regardless of whether they performed other duties.

And most consequentially, by depriving the House of a quorum, Respondents did not merely fail to perform their own duties but also prevented the House as a whole from conducting business. In other words, Respondents misused their legislative offices to prevent the Legislature from functioning and fulfilling its constitutional obligations. Such an abuse goes beyond refusal.

Respondents cannot undo the loss of their offices by returning to the State. That has been the rule since common law, at which courts held that quo warranto was a

proper remedy against an officer who, despite not using his office for so long as to forfeit his office, reappeared and attempted to exercise that office. *See The King v. Bridge*, (1749) 96 Eng. Rep. 25, 25, 1 Black. W. 46, 46-47.

### 3. Breaking quorum and evading the authority of the remaining members to compel attendance is a refusal to perform a representative's duty, not a means of fulfilling that duty.

A legislator's duty is not to prevent, by any means possible, the passage of undesirable legislation but rather to act upon legislation. *Contra* QWR.14, 84. Legislative acts may include opposing legislation though parliamentary procedure, debate, and voting. *See* Tex. Const. art. III, §§ 11-12. For example, a legislator may use parliamentary procedure to delay a vote by raising a point of order or filibustering. *See* Resp. Merits Br. 67. But legislative acts do not include *all* means of opposing legislation. *See United States v. Brewster*, 408 U.S. 501, 512-13 (1972); *see also In re Perry*, 60 S.W.3d 857, 860 (Tex. 2001) (orig. proceeding).

Respondents argue (at 62-68) that fleeing the State to prevent the House from forcing a quorum and evade their arrest warrants was a legislative act for which they are entitled to legislative immunity. Respondents base that conclusion on the incorrect premise (at 64) that any act taken "to further their opposition to legislation" is necessarily legislative in character. That is wrong.

*First*, not "all conduct *relating to* the legislative process" is itself a legislative act. *See Brewster*, 408 U.S. at 515 (emphasis added). Rather, legislative acts for which a legislator is immune are limited to "things generally done in a session of the House by one of its members in relation to the business before it" like writing committee

reports and voting on legislation. *Kilbourn v. Thompson*, 103 U.S. 168, 204 (1880); *see In re Perry*, 60 S.W.3d at 859-62 (relying on the federal Constitution's analogous Speech or Debate Clause).

The fact that legislators "generally perform certain acts in their official capacity as [legislators] does not necessarily make all such acts legislative in nature." *Gravel v. United States*, 408 U.S. 606, 625 (1972). Indeed, legislators engage in many non-legislative acts like "preparing so-called 'news letters' to constituents, news releases, and speeches delivered outside the Congress." *Brewster*, 408 U.S. at 512. "Although these are entirely legitimate activities, they are *political* in nature rather than *legislative*[.]" *Id.* (emphasis added). A legislator retains his privilege if he delivers a speech on the house floor but, if he "publishes his speech, and it contains libellous matter, he is liable." 2 Joseph Story, *Commentaries on the Constitution of the United States* § 863, at 329 (Bos., Hilliard, Gray, & Co., 1833).

Respondents point (at 29, 65) to their interactions with colleagues, staff, and constituents as evidence that they continued performing the duties of their offices while they broke quorum. Although communications with colleagues, staff, and third parties (like constituents) who are brought "*into* the [legislative] process" fall within "the sphere of legislative activity," *La Union Del Pueblo Entero v. Abbott*, 68 F.4th 228, 235-37 (5th Cir. 2023) (citation omitted); *see Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 158-59 (Tex. 2004), those activities are not at issue. Respondents do not assert immunity for their communications; they assert immunity for their decision to break quorum and flee the State.

That decision, however, was not a legislative act. It had nothing to do with making statements in committee hearings, *Gravel*, 408 U.S. at 624; drafting committee reports, *Kilbourn*, 103 U.S. at 204; or voting on bills, *id.* And it did not occur in "the regular course of the legislative process." *United States v. Helstoski*, 442 U.S. 477, 489 (1979) (quoting *Brewster*, 408 U.S. at 525). Indeed, Respondents' efforts to prevent the Legislature from obtaining a quorum and conducting business are antithetical to one of the Legislature's "most undoubted and important privileges"—the right to *force* a quorum. Luther Stearns Cushing, *Lex Parliamentaria Americana: Elements of the Law and Practice of Legislative Assemblies in the United States of America* § 264, at 101 (Bos., Little, Brown & Co., 1856); *see In re Abbott*, 628 S.W.3d at 292, 297.

*Second*, legislative immunity serves to "encourage free and open debate"—not to allow legislators to absent themselves from debate by fleeing the State. *See In re Perry*, 60 S.W.3d at 859 (citing *Bogan v. Scott-Harris*, 523 U.S. 44, 52 (1998)). Indeed, legislative immunity "is not intended to protect individual legislators, but instead serves the public's interests." *Id.* (citing *Tenney v. Brandhove*, 341 U.S. 367, 373-74 (1951)). Respondents' claim to immunity is therefore inconsistent with the very reasons that legislative immunity exists. *See Tenney*, 341 U.S. at 373, 376-77.

**4. Quorum-breaking outside the State is a recent innovation.**

For much of Texas history, legislators attempting to break a quorum remained physically in the State and were thus unquestionably subject to the power of present members to compel their attendance. State Merits Br. 41-42. It was not until the last

20 years that minority factions began fleeing the State to avoid the present members' quorum-forcing powers. *Id.*

In response, Respondents argue (at 24) that "quorum-breaking is a form of filibuster." That is wrong. Filibustering—that is, speaking against a bill—is a parliamentary procedure used on the floor of a legislature. *See generally* Tex. Const. art. III, § 21. Breaking quorum, by contrast, is designed to prevent proceedings entirely.

And although the Texas Constitution "enables 'quorum-breaking' by a minority faction of the legislature, it likewise authorizes 'quorum-forcing' by the remaining members." *In re Abbott*, 628 S.W.3d at 292. The key difference between the historical quorum breaks that may have been contemplated by the framers of the Constitution, and the modern ones that Respondents now defend (at 25), is the circumvention of the Constitution's quorum-forcing provision. The quorum-forcing provision cannot perform its functions of ensuring "that the legislature can continue to do business despite efforts by a minority faction to shut it down," *In re Abbott*, 628 S.W.3d at 297, when that minority faction flees the State.

As Respondents admitted, circumventing the quorum-forcing provision was their goal. *E.g.*, QWR.44. If blessed by this Court, Respondents conduct threatens to upset the "careful balance" of powers that this Court recognized in *In re Abbott*, leaving the Legislature unable to force a quorum and the People of Texas without a body capable of exercising the legislative power.

## Prayer

For these reasons, this Court should declare that Respondents have vacated their offices as State Representatives.

Respectfully submitted.


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