

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

REPLY IN SUPPORT OF EMERGENCY PETITION FOR WRIT OF QUO WARRANTO

GREG ABBOTT
Governor of Texas

Office of the Governor
P.O. Box 12428
Austin, Texas 78711
Tel.: (512) 936-3306
Fax: (512) 463-1932

TREVOR W. EZELL
General Counsel
State Bar No. 24109849
Trevor.Ezell@gov.texas.gov

JOSEPH P. BEHNKE
Deputy General Counsel

JASON T. BRAMOW
Assistant General Counsel

CALEB GUNNELS
Assistant General Counsel

*Counsel for Greg Abbott, in his
official capacity as Governor of
the State of Texas*

IDENTITY OF PARTIES AND COUNSEL

Below is a complete list of parties and counsel to this original proceeding:

Relator: Greg Abbott
Governor of the State of Texas

**Relator's
Counsel:** Trevor W. Ezell (lead counsel)
Joseph P. Behnke
Jason T. Bramow
Caleb Gunnels
P.O. Box 12428
Austin, Texas 78711
Tel.: (512) 936-3306
Fax: (512) 463-1932
Trevor.Ezell@gov.texas.gov

Respondent: Gene Wu
Texas State Representative

**Respondent's
Counsel:** Chad W. Dunn (lead counsel)
K. Scott Brazil
Brazil & Dunn, LLP
1900 Pearl Street
Austin, Texas 78705
Tel.: (512) 717-9822
chad@brazilanddunn.com

Amy Warr
Alexander Dubose & Jefferson LLP
100 Congress Ave., Suite 1450
Austin, Texas 78701
Tel.: (512) 482-9300

Mimi Marziani
Joaquin Gonzalez
Rebecca Stevens
Marizani, Stevens & Gonzalez, PLLC
500 W. 2nd St., Suite 1900
Austin, Texas 78701
Tel.: (210) 343-5604

TABLE OF CONTENTS

	Page
IDENTITY OF PARTIES AND COUNSEL	i
INDEX OF AUTHORITIES	iv
INTRODUCTION	1
ARGUMENT.....	2
I. The Governor May Pursue a Writ of Quo Warranto to Remove Representative Wu in this Original Action.....	2
II. A Proper Understanding of the Constitution’s Quorum Requirement Shows Wu Forfeited His Office.	8
PRAYER	13
CERTIFICATE OF COMPLIANCE.....	14
CERTIFICATE OF SERVICE	14

INDEX OF AUTHORITIES

	Page(s)
CASES:	
<i>In re Abbott</i> , 628 S.W.3d 288 (Tex. 2021)	8
<i>Banton v. Wilson</i> , 4 Tex. 400 (Tex. 1849).....	5
<i>Betts v. Johnson</i> , 73 S.W. 4 (Tex. 1903)	3
<i>Gibbs v. Borough of Somers Point</i> , 49 N.J.L. 515 (1887).....	5
<i>Honey v. Graham</i> , 39 Tex. 1 (1873).....	7
<i>N.L.R.B. v. Noel Canning</i> , 573 U.S. 513 (2014).....	10
<i>In re Nolo Press/Folk Law, Inc.</i> , 991 S.W.2d 768 (Tex. 1999)	3
<i>Paxton v. Annunciation House, Inc.</i> , No. 24-0573, 2025 WL 1536224 (Tex. 2025).....	4
<i>Pennsylvania v. Frank</i> , 4 Pa.C.C. 618 (1888)	3
<i>People v. Baldrige</i> , 267 Ill. 190 (1915)	6
<i>People v. Lindsey</i> , 80 Colo. 465 (1927).....	6
<i>Powell v. Reiswerg</i> , No. 14-12-00776-CV, 2013 WL 5883807 (Tex.Ct.App.— Houston [14th Dist.] 2013)	8
<i>State ex rel. Anderson v. Port of Tillamook</i> , 62 Or. 332 (1912)	6
<i>State ex rel. Angelini v. Hardberger</i> , 932 S.W.2d 489 (Tex. 1996)	8
<i>State ex rel. City of Colleyville v. City of Hurst</i> , 519 S.W.2d 698 (Tex. Civ. App.—Fort Worth 1975)	4

<i>United States ex rel. Frizzell v. Newman</i> , 42 App.D.C. 78 (1914).....	5
<i>White v. White</i> , 108 Tex. 570 (1917).....	6

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES:

U.S. CONST. art. IV, § 4.....	11
-------------------------------	----

TEX. CONST. art. I:

§ 2	11
§ 15	6

TEX. CONST. art. II, § 1.....	2
-------------------------------	---

TEX. CONST. art. III:

§ 1	2, 10
§ 2	2
§ 5(a)	10
§ 5(b)	10, 12
§ 10	8, 9, 11
§ 11	9
§ 12(b)	11
§ 14	11
§ 17	12
§ 21	11
§ 23	11
§ 40	12

TEX. CONST. art. IV:

§ 1	3
§ 22	4

TEX. CONST. art. V:

§ 1	3
§ 3	4
§ 10	5

TEX. CONST. art. VIII, § 6	12
----------------------------------	----

TEX. CONST. art. XVI, § 1(c)	2
------------------------------------	---

TEX. CIV. PRAC. & REM. CODE ch. 66.....	4
---	---

TEX. GOV'T CODE:

§ 22.002.....	4
§ 22.002(a)	2, 5
TEX. R. APP. PROC. 38.1(i)	8

OTHER AUTHORITIES:

CBS Texas, <i>Texas Rep. Wu Defiant After Gov. Abbott Petitions to Remove Him from Office in Redistricting Battle</i> , YOUTUBE, at 5:59–6:32 (Aug. 5, 2025), https://www.youtube.com/watch?v=Fg6wxMGUJ70	1
4 WILLIAM HAWKINS, PLEAS OF THE CROWN (7th ed. 1795)	3, 4, 5, 6
<i>Quo Warranto Against Private Corporations</i> , 41 HARV. L. REV. 244 (1927)	5

INTRODUCTION

Respondent Wu nowhere controverts the facts in the petition. Things have only gotten worse since it was filed. Asked days ago whether he would return to Texas, Wu responded curtly: “Hell no.”¹ Just yesterday Democrats denied the House a quorum for a *third time*.

Now, Wu insists he is carrying out his duties “as his judgment dictates.” But with no regard for carrying out his duties in the way the Constitution requires. Our Constitution is structured to deliver a quorum, not to prevent one. Wu’s determination that “special session is over” grinds government to a halt, arrogating to himself the Governor’s prerogative to call a Special Session and the Speaker’s ability to gavel out, undermining the Legislature’s duty to meet and act on bills.

Who suffers in the meantime? Texans. Across the State, families are counting on disaster relief and enhanced flood infrastructure. Rather than act on bills as constitutionally required and let the chips fall where they may, Wu claims authority to pretermite the process

¹ CBS Texas, *Texas Rep. Wu Defiant After Gov. Abbott Petitions to Remove Him from Office in Redistricting Battle*, YOUTUBE, at 5:59–6:32 (Aug. 5, 2025), <https://www.youtube.com/watch?v=Fg6wxMGUJ70>.

entirely. His arguments demonstrate how destructive this burgeoning practice is—and why the Court must intervene now.

ARGUMENT

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

Texas law and centuries of practice confirm Wu is a proper object of this petition, Governor Abbott is a proper relator, and this Court is a proper venue. The Court may issue “all writs of quo warranto...agreeable to the principles of law...against...any officer of state government except the governor.” TEX. GOV’T CODE §22.002(a). That includes original writs of quo warranto ousting legislators forfeiting their offices.

A. Wu suggests (at 5–7) an elected Representative is not an “officer of state government.” How can that be? The Constitution divides all power of state government between “three distinct departments.” TEX. CONST. art. II, §1. It then vests the “Legislative power” in “a Senate and a House of Representatives.” *Id.* art. III, §§1–2. That is *why* the Constitution classes legislators among “other elected and appointed state officers.” *Id.* art. XVI, §1(c). Wu’s view would create a bizarre

world where all legislative power is vested in the Legislature, but there are no “officers of state government” there to wield it.

That the Legislature’s power may be more diffuse when compared to the Executive Department (with six constitutional officers) cannot change the analysis. Instead, it distinguishes Wu’s cases, which concerned *delegees* downstream of constitutional officers. *See In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768 (Tex. 1999) (Unauthorized Practice of Law Committee *within* Judicial Department); *Betts v. Johnson*, 73 S.W. 4 (Tex. 1903) (Board of Eclectic Medical Examiners *within* Executive Department). Wu is not a “board member,” exercising delegated executive power lodged in the Governor. Rather he is—like Justices of this Court and the Governor—a constitutional officer *directly* vested with the sovereign power of state government. *Compare* TEX. CONST. art. V, §1; *id.* art. IV, §1.

Wu’s argument also has no footing in historical practice. English treatises approve the writ’s use to test “members of parliament.” 4 WILLIAM HAWKINS, PLEAS OF THE CROWN 99 (7th ed. 1795). Early American caselaw points the same way. *E.g.*, *Pennsylvania v. Frank*, 4 Pa.C.C. 618, 621 (1888) (“a public position to which a portion of the

sovereignty of the country either *legislative*, executive, or judicial, attaches” is “properly” within quo warranto).

B. Next, Wu insists (at 16–18) Governor Abbott is not a proper relator, relying (at 1) on the Attorney General. But even the Attorney General now agrees that quo warranto need not be adjudicated exclusively in district court.

The Governor has already explained how §22.002 of the Government Code sits alongside Chapter 66 of the Civil Practice and Remedies Code. Wu collapses them by fixating on the wrong provisions. Article IV, §22 singles out the Attorney General, authorizing him to “inquire into the charter rights of all private *corporations*.” Conversely, Article V, §3 does not limit who may seek quo warranto generally against public officers. Tellingly, the cases Wu cites involved corporations. *See Paxton v. Annunciation House, Inc.*, 2025 WL 1536224, at *7 (Tex. 2025); *State ex rel. City of Colleyville v. City of Hurst*, 519 S.W.2d 698, 700 (Tex.Civ.App.—Fort Worth 1975).

As it happens, that distinction maps perfectly onto historical practice. “Any person or persons” could prosecute a writ of quo warranto to challenge a public officeholder. 4 HAWKINS, *supra*, at 96. Meanwhile,

quo warranto was not available to contest a corporate charter “except in the name of the Attorney General.” *Id.* at 100; *see Gibbs v. Borough of Somers Point*, 49 N.J.L. 515, 517 (1887) (distinguishing writs sought by “attorney general” concerning corporate franchises and writs sought by “any person” concerning public offices); *United States ex rel. Frizzell v. Newman*, 42 App.D.C. 78, 88 (1914) (taxpayer could challenge incumbent officeholders).

It hardly matters that, as Wu observes, a statute broadly authorized relators other than an attorney general to seek relief in non-corporation cases. The Statute of Ann forms part of “the principles of law” that are “agreeable” to these historic writs. TEX. GOV’T CODE §22.002(a); *see Quo Warranto Against Private Corporations*, 41 HARV. L. REV. 244 n.2 (1927) (“Either by the common law or by express adoption this statute has become the law of most of our states.”). Accordingly, this Court approved private relators asserting a public injury in *Banton v. Wilson*, 4 Tex. 400, 407 (Tex. 1849).

C. Finally, Wu claims (at 14–17) he is entitled to a jury trial. He is not. “Texas’s broad jury right,” broad though it is, has no application. First, Article V, §10 entitles a party to a jury “[i]n the trial of all causes

in the *district courts*.” This is not a district court. Second, Article I, §15 guarantees a jury trial in cases historically tried by a jury. *White v. White*, 108 Tex. 570, 581 (1917). Quo warranto is not one of them. Because Wu does not identify a single case, much less a pattern, holding a jury trial is always required for quo warranto proceedings, there is nothing to “remain inviolate.”

Wu’s arguments get things backwards. Quo warranto developed because of a need for speed in scenarios like this one: “it was found very difficult and oftentimes impracticable” under existing law “to bring to a trial and determination the right of such persons to the said offices” before the public suffered “divers acts prejudicial to the good order.” 4 HAWKINS, *supra*, at 95. Quo warranto held out an expedited process that was deliberately “not like that in other civil proceedings”; instead, “[i]n quo warranto proceedings we find the rule reversed” and “the entire onus is on the defendant.” *People v. Lindsey*, 80 Colo. 465, 490 (1927) (quoting *People v. Baldrige*, 267 Ill. 190, 195 (1915) and *State ex rel. Anderson v. Port of Tillamook*, 62 Or. 332, 336 (1912)).

In any event, a trial would be pointless given Wu’s failure to meaningfully dispute any facts, including those about *constitutional*

bribery. He practically concedes (at 12) he is receiving money “tie[d]” to “specific policy actions.” Still, Wu says he “generally disputes” the Governor’s petition. But he nowhere claims the quotes or images it contains are somehow fabricated. Does Wu mean to suggest, then, that despite grandstanding in Illinois for days, he is actually here in Texas? When he said, “Hell no” he would not return, did he really mean to say “Hell yes” I’ll be home soon? Does Wu just generally not mean what he says? Of course not. Wu’s uncontroverted statements and actions establish his forfeiture of office as a matter of law. The Governor, meanwhile, will continue to call Special Sessions indefinitely until the Legislature’s work is done, the very thing Wu is committed to avoiding.

Honey v. Graham is not to the contrary. While *Honey* affirmed an officeholder is entitled to some measure of process, the officer in that case was simply removed by the Governor—without issuance of a writ of quo warranto. 39 Tex. 1, 10–11 (1873). In other words, quo warranto *is* the process due. A full adjudication before the highest court in our State is surely the gold standard of due process. Even Wu agrees (at 14) this Court may adjudicate an original writ without a jury if “relief

d[oes] not turn on a disputed fact issue,” as the Court did in *State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489 (Tex. 1996).

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

Wu’s arguments on the merits hinge entirely on misreading the Quorum Clause and turning a blind eye to his legislative duties.²

A. Throughout his brief (at 1, 3, 10, 19, 20), Wu suggests he has a right to break quorum. That is not what the Constitution or the House Rules say, and it is not what this Court said in *In re Abbott*, 628 S.W.3d 288 (Tex. 2021). There, the Court said “article III, section 10 *enables* ‘quorum-breaking’ by a minority faction of the legislature.” *Id.* at 292 (emphasis added). In saying that much, the Court chose its words carefully. It did not say the Constitution “authorizes” or “approves” quorum breaking, or that legislators have a “right” to abandon the process they swore to uphold.

Instead, this Court merely recognized existence of the practical ability to disrupt a quorum. In other words, the Constitution “enables” quorum breaking in the same way that a highway “enables” one to

² In a footnote in the background section (at 3 n.1), Wu devotes one sentence each to four arguments under the U.S. Constitution. The Court should deem those arguments forfeited. *See, e.g., Powell v. Reisweg*, 2013 WL 5883807, at *4 (Tex.App.—Houston [14th Dist.] 2013); *cf. TEX. R. APP. PROC.* 38.1(i).

reach speeds of 120 MPH in a 60 MPH zone. Exercising the “freedom” to speed may result in law enforcement issuing a speeding ticket, hauling the driver into court, and ultimately—if infractions persist—taking away the driver’s license.

Likewise, when it comes to a quorum, our Constitution states a number required to do business and lays out consequences to ensure that number is met. Just as the driver who speeds is subject to escalating consequences seeking to curb misconduct, the Constitution authorizes the House to compel the attendance of absent members, punish them for disorderly conduct, and even expel. TEX. CONST. art. III, §§10, 11. It makes no sense to say an individual has a right to engage in conduct the Constitution subjects to punishment. It also is incorrect to say these remedies are exclusive when they deal with qualifications or when a legislator absconds, rendering them meaningless. The Constitution, moreover, expressly authorizes a quo warranto action for unprecedented abuses like Wu’s.

The fact that legislators may have broken quorum in the past is irrelevant. Bad habits are not the measure of what the Constitution means. This Court should not embrace Wu’s “adverse-possession

theory” of interpretation. *N.L.R.B. v. Noel Canning*, 573 U.S. 513, 570 (2014) (Scalia, J., concurring in judgment).

B. Relatedly, Wu confuses his duties as a legislator. He claims (at 8) that, despite fleeing the State and refusing to participate in the business of the Legislature, “he continues to carry out his legislative duties as his judgment dictates.” Wu is not free to recast the role of legislator in his own image. The work of representing constituents during session does not consist of being an absentee social media influencer. Instead, that work is set out in the Constitution.

The Constitution vests the Legislature with legislative power. TEX. CONST. art. III, §1. To actualize that power, legislators “shall meet” when in session, including when called into Special Session by the Governor. *Id.* §5(a). The next paragraph describes the business of meeting—*i.e.*, legislators “shall” introduce bills, they “shall hold hearings” on them, and they “shall act upon” legislation by voting for, against, or not at all. *Id.* §5(b). While those tasks are (by default) divided into three periods during a Regular Session, during a Special Session legislators must do those same things in a condensed timeline.

Attendance is required, hence why it may be “compelled,” *id.* §10, and why votes shall be recorded for “each member,” *id.* §12(b).

Legislators are also entitled to certain privileges—for the purpose of facilitating this work. The privilege from arrest, for example, applies for a specific period (“during the session”) and for a specific purpose (for “going to and returning from” session). *Id.* §14. Likewise, legislators cannot be questioned “for words spoken in debate in either House.” *Id.* §21. And legislators are entitled to a per diem “for each day during” session *because* the Constitution presumes daily attendance. *Id.* §23.

C. The Constitution painstakingly describes *how* a legislator represents constituents during session. Which functions has Wu fulfilled since he began his self-imposed exile from the State? None. While claiming to uphold his oath to the federal and state constitutions, he undercuts them: Both guarantee Texans “a Republican Form of Government.” U.S. CONST. art. IV, §4; TEX. CONST. art. I, §2.

For all his discussion on separation of powers, Wu is the one transgressing its limits. Under his view, a minority posse in one chamber could command the powers of fellow members and of the sister chamber and neutralize every function of state government—preventing

even the passage of a biennial budget as required by the Constitution. TEX. CONST. art. III, §17; *id.* art. VIII, §6. And Wu insists there is no recourse. Legislators alone, he claims, are immune to remedies that check actors in the executive and judicial departments.

None of this is theoretical. Invading the Governor's prerogative, Wu has openly committed to "ending" this Special Session. *Id.* art. III, §§5(b), 40. Governor Abbott, meanwhile, will continue to call them. If this Court does not make clear now that Wu has forfeited his office, he may continue this infinite jest in a supposed quest to "save democracy" that really installs *him* as Supreme Leader. He has unequivocally renounced his duty—at the behest those who paid him to do it. Pet.10. Wu no longer wishes to function as a representative. This Court should oblige.

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

/s/ Trevor W. Ezell
TREVOR W. EZELL
General Counsel
Texas Bar No. 24109849
Trevor.Ezell@gov.texas.gov

JOSEPH P. BEHNKE
Deputy General Counsel

JASON T. BRAMOW
Assistant General Counsel

CALEB GUNNELS
Assistant General Counsel

Office of the Governor
P.O. Box 12428
Austin, Texas 78711
(512) 936-3306

*Counsel for Greg Abbott, in his
official capacity as Governor of
the State of Texas*

CERTIFICATE OF COMPLIANCE

The Texas Rules of Appellate Procedure do not prescribe a word limit for a dispositive motion in an original proceeding like this. Microsoft Word reports that this document contains 2,400 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Trevor W. Ezell

Trevor W. Ezell

Counsel for Relator

CERTIFICATE OF SERVICE

Undersigned counsel hereby certifies that, on August 9, 2025, a true and correct copy of the foregoing petition was served by email to all counsel of record.

/s/ Trevor W. Ezell

Trevor W. Ezell

Counsel for Relator