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.

OPENING BRIEF ON THE MERITS FOR THE STATE OF TEXAS

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"QWR" refers to the State's quo warranto record. "Supp.QWR" refers to the State's supplemental quo warranto record filed concurrently alongside this brief.

Statement of the Case

Nature of the Case: The State of Texas brings this original proceeding for writs of quo warranto. Respondents, thirteen members of the Texas House of Representatives, fled from the State with the intent to, and for the admitted purpose of, interfering with the operation of the Legislature. Respondents willfully refused to return when the Legislature was convened by the Governor and despite the Speaker of the House's issuance of warrants for their arrest, thereby preventing a quorum for the First Called Session of the 89th Legislature.

Because Respondents abandoned their offices as State Representatives, the Attorney General, on behalf of the State, seeks a declaration that those positions are vacant.

Offices Held by Respondents:
State Representative, District 27
State Representative, District 47
State Representative, District 49
State Representative, District 50
State Representative, District 51
State Representative, District 70
State Representative, District 76
State Representative, District 101
State Representative, District 102
State Representative, District 104
State Representative, District 136
State Representative, District 137
State Representative, District 145[1]

[1] Representative Christina Morales' district number was mistakenly listed as "124" in the Statement of the Case in the State's petition.

Statement of Jurisdiction

The Court has jurisdiction under Texas Government Code section 22.002(a). *See also* Tex. Const. art. V, § 3(a); *Paxton v. Annunciation House, Inc.*, No. 24-0573, 2025 WL 1536224, at *7 (Tex. May 30, 2025) ("[T]he Texas Constitution and state law currently authorize *direct* actions seeking a writ of quo warranto in this Court[.]").

Issue Presented

Whether Respondents—who, despite the issuance of warrants for their arrest, refused to attend a special session called by the Governor and absented themselves from the State with the admitted intent of disrupting the operation of the Texas Legislature—abandoned their offices as State Representatives.

Introduction

This petition calls on this Court to uphold the constitutional protections it recognized four years ago: "Rather than impose an absolute supermajoritarian check on the legislature's ability to pass legislation opposed by a minority faction, [article III, section 10] ensures that the legislature can continue to do business despite efforts by a minority faction to shut it down by breaking quorum." *In re Abbott*, 628 S.W.3d 288, 297 (Tex. 2021) (orig. proceeding).

The Texas Constitution strikes a "careful balance between the right of a legislative minority to resist legislation and the prerogative of the majority to conduct business." *Id.* at 292. "[I]n addition to setting the now-well-known quorum requirement at two-thirds, the constitution in its next breath gives the present members of each chamber a remedy against the absent members when a quorum is lacking." *Id.* "Just as article III, section 10 enables 'quorum-breaking' by a minority faction of the legislature, it likewise authorizes 'quorum-forcing' by the remaining members." *Id.* This principle "is one of the foundational constitutional rules governing the lawmaking process in Texas." *Id.*

Respondents, thirteen members of the Texas House Representatives, have directly attacked this foundational constitutional rule. Not only did they fail to attend the first Special Session called by the Governor, preventing the House from achieving a quorum for the remainder of the Session, but they also fled the State for the purpose of nullifying the quorum-forcing power of the remaining members. These tactics succeeded, depriving the Legislature of a quorum to conduct business.

But although the Legislature proved unable to compel the attendance of absent members through its article III, section 10 power, the common law provides a remedy for Respondents' misconduct. This Court's well-established authority to issue writs of quo warranto empowers it to declare that Respondents have forfeited their offices through "neglect or abuse." *See* 3 William Blackstone, *Commentaries* *262. By refusing to perform the duties of their offices, Respondents vacated those offices.

Respondents did not merely refuse to perform their own duties—their flight from the State intentionally deprived the Legislature as a whole of the quorum necessary to conduct business and nullified the present members' power to compel attendance. A legislator's duty is not to "do everything in [his] power" to prevent the passage of legislation with which he disagrees, *contra* QWR.26, just as a judge's duty is not to do everything in his power to prevent the issuance of opinions with which he disagrees. Legislators are free to use any legislative powers at their disposal—parliamentary procedure, debate, and voting—but they must play the game, not overturn the board. Fleeing the State is an abandonment of office, not a fulfillment of a State Representative's duties.

Far from intruding on the separation of powers, the State's petition vindicates them, seeking to ensure that the Legislature can obtain the quorum necessary to exercise its constitutional duties and that the powers of the remaining members to force a quorum remain effective. This Court should issue the writs of quo warranto.

Statement of Facts

On July 9, the Governor called a Special Session of the 89th Legislature commencing at noon on Monday, July 21, 2025. *See* QWR.122-24. The Special Session involved significant legislation important to the State, including flood relief, election integrity, and redistricting ahead of the March 2026 primaries. *Id.*

For the first two weeks, the Special Session proceeded according to the ordinary legislative process: the Texas Legislature held hearings and discussed potential legislation. But on Sunday, August 3, a legislative minority, apparently disappointed with the anticipated results of the legislative process, fled the State and refused to return and participate in the business of the Texas Legislature. Supp.QWR.165-71.

The Constitution provides that "[t]wo-thirds of [the] House"—that is, 100 of the 150 members—"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 [the] House may provide." Tex. Const. art. III, § 10.

Respondents, thirteen Democratic members of the Texas House of Representatives, are among more than fifty Democrats who fled the State for the express purpose of denying the House a quorum to conduct business and thus prevent the passage of legislation that they opposed. Each Respondent released public statements admitting that the purpose and intent of these absences was to disrupt the work of the House.

Representative Ron Reynolds announced that had left the State of Texas for the express purpose of breaking quorum. *See* QWR.11 ("I'm breaking quorum

today[.]"); QWR.10 ("I just landed in Chicago[.]"). Representative Reynolds stated that fleeing the State had fulfilled his "promise that [he] would do everything [he] can" to stop the passage of anticipated legislation during the Special Session. QWR.14.

Representative Vikki Goodwin announced that she "left w[ith her] Democratic colleagues to put a stop" to the duly instituted proceedings of the Texas House. QWR.24. Representative Goodwin also stated that she was "willing to take the risk of being . . . removed from office." QWR.26.

Representative Gina Hinojosa stated: "I'm breaking quorum." QWR.30. Representative Hinojosa admitted in a public interview: "We don't have the numbers to [defeat this legislation] because we are the minority party in Texas. But we do have the numbers to stop business on the floor of the House. And so, with our departure, that business has stopped." QWR.32.

Representative James Talarico announced: "My Democratic colleagues and I just left the state of Texas to break quorum." QWR.40. Representative Talarico explained that "a certain number of legislators need to be on the floor to conduct business—a quorum. My Democratic colleagues and I are not giving them one." QWR.42. He also explicitly noted that he and his fellow quorum-breakers fled the State to escape efforts to restore quorum: "Greg Abbott and Ken Paxton will try to arrest us. So we're traveling to Illinois for safe harbor." QWR.44.

Representative Lulu Flores announced the intended—and actual—result of her and her co-absentees' quorum break: that the called "special session [was] over." QWR.54.

Representative Mihaela Plesa said, describing her flight from the State, that she "took a stand and denied Republicans a quorum." QWR.61.

Representative Suleman Lalani stated that "[b]reaking quorum is our last tool to protect Texans" from the perceived effects of the special session. QWR.73.

Representative Chris Turner issued a statement announcing that he and other Respondents "left the state of Texas and are breaking quorum — denying . . . the ability to pass" any legislation in the special session. QWR.77.

Representative Ana-Maria Rodriguez Ramos stated that she and fellow Respondents aimed "to do anything [they] could to stop [legislation at the Special Session]," which is "why [they] decided to deny quorum." QWR.84.

Representative Jessica Gonzalez announced: "My Democratic colleagues and I are denying quorum." QWR.88. Representative Gonzalez added that she "refuse[d] to further participate in this sham of a special session." *Id.*

Representative John Bucy announced, while "on a plane to Chicago," that he and fellow Respondents were "breaking quorum." QWR.92.

Representative Gene Wu stated: "By breaking quorum, we're putting an end to this corrupt special session." QWR.113. Representative Wu doubled down on this sentiment, declaring that, in consequence of the quorum break, "this corrupt special session is over." QWR.116.

Representative Christina Morales—while actively impeding the democratic process—stated simply: "No Democracy, no quorum." QWR.101. She later proclaimed: "I helped shut down the corrupt special session." QWR.103.

As the Governor explained on August 3, "these absences were premeditated for an illegitimate purpose" of "abdicating the duties of their office[s] and thwarting the chamber's business":

> Rather than doing their job and voting on urgent legislation affecting the lives of all Texans, they have fled Texas to deprive the House of the quorum necessary to meet and conduct business.
>
> These absences are not merely unintended and unavoidable interruptions in public service, like a sudden illness or a family emergency. Instead, these absences were premeditated for an illegitimate purpose—what one representative called "breaking quorum." Another previously signaled that Democrats "would have to go by an extreme measure" of a quorum break "to stop these bills from happening." In other words, Democrats hatched a deliberate plan not to show up for work, for the specific purpose of abdicating the duties of their office and thwarting the chamber's business.

QWR.1.

On August 4, following a roll call which determined a lack of quorum, the present members of the House exercised their authority to "compel the attendance of absent members," Tex. Const. art. III, § 10, ordering a call of the House and instructing "the sergeant-at-arms . . . to send for all absentees whose attendance is not excused for the purpose of securing and maintaining their attendance, under warrant of arrest if necessary," QWR.3-5. That same day, in accord with this action and his promise to "immediately sign the warrants for the civil arrest of [absent] members," QWR.3, the Speaker of the House signed arrest warrants for truant members, including Respondents, *see* QWR.8.

The Governor "ordered the Texas Department of Public Safety to locate, arrest, and return to the House chamber any member who has abandoned their duty to

Texans." QWR.8. But by fleeing the State, Respondents avoided arrest. *See* QWR.44 ("Greg Abbott and Ken Paxton will try to arrest us. So we're traveling to Illinois for safe harbor."). Although the Attorney General attempted to enforce the Speaker's warrants in other states to which Respondents fled, *see, e.g.*, Complaint, *Tex. House of Representatives v. Bowers*, No. 25CI-000188 (Cal. Super. Ct. Aug. 8, 2025), those efforts were unsuccessful, Order, *Tex. House of Representatives v. Bucy*, No. 2025MR65 (Ill. Cir. Ct. Aug. 13, 2025).

On Tuesday, August 5, the Attorney General warned that "the continued refusal to perform legislative duties by Texas House Democrats who broke quorum constitutes abandonment of office" and that he would "pursue a court ruling ensuring that their seats are declared vacant" should the absent members not return to the House Chamber by the Speaker's August 8 deadline. QWR.120. Later that day, the Governor filed a petition in this Court for writ of quo warranto, asking this Court to declare Representative Wu's office vacant. Emergency Petition for Writ of Quo Warranto, *In re Abbott*, No. 25-0674 (Tex. Aug. 5, 2025).

Despite the Attorney General's express and unequivocal notice that Respondents' continued failure to perform the duties of their offices by the Speaker's deadline would constitute an abandonment of those offices, Respondents and other members of the legislative minority continued in their course of action. To restore a functioning legislative department, on August 8 the Attorney General petitioned this Court, on behalf of the State of Texas, for writs of quo warranto declaring Respondents' offices vacant.

On August 15, Respondents' tactics succeeded: the First Special Session adjourned sine die without the Legislature having achieved a quorum. Supp.QWR.215. By fleeing the State and refusing to perform their duties, Respondents thwarted the remaining members' quorum-forcing powers under article III, section 10 and "stop[ped] business on the floor of the House." QWR.32.

The Governor has now called a second special session. And although Respondents have now returned to Texas and provided a quorum on Monday, August 18, Supp.QWR.218-22, this Court must still determine whether Respondents, by fleeing the State and refusing to perform the duties of their offices, vacated their offices or whether a minority faction can "impose an absolute supermajoritarian check on the legislature's ability to pass legislation," *see In re Abbott*, 628 S.W.3d at 297.[2]

[2] Although the State is mindful of this Court's encouragement to aligned parties to file joint briefs, the accelerated briefing schedule rendered joint briefing impracticable.

Summary of the Argument

I. The writ of quo warranto is an ancient common-law writ with roots stretching back to the thirteenth century. The writ was historically used, among other things, as a means for testing the right of an individual to hold public office when that individual had forfeited his office through neglect, misuse, or refusal to exercise its duties. This robust common-law tradition carried forward to America following Independence, including to Texas in its days as a Republic.

As this Court confirmed just a few months ago, the "Texas Constitution and state law currently authorize *direct* actions seeking a writ of quo warranto in this Court." *Paxton v. Annunciation House, Inc.*, No. 24-0573, 2025 WL 1536224, at *7 (Tex. May 30, 2025) (citing Tex. Const. art. V, § 3(a); Tex. Gov't Code § 22.002(a)). The State is a proper relator to petition for writs of quo warranto to declare offices vacant, *Wright v. Allen*, 2 Tex. 158, 159-60 (1847), and the Attorney General is the State's authorized representative in this Court, Tex. Const. art. IV, § 22. Because this Court has consolidated the State's quo warranto proceeding with the Governor's separate action, it is unnecessary for this Court to address whether the Governor would independently have standing to press such claims.

Respondents, thirteen members of the House, are also proper respondents. This Court's authority to issue writs of quo warranto extends, with limited exceptions, to "any officer of state government"—a phrase that includes members of the House. Tex. Gov't Code § 22.002(a). The Texas Constitution repeatedly refers to State Representatives as state officers. *See, e.g.*, Tex. Const. art. XVI, § 1 (requiring members of the legislature, as "state officers," to take an oath of office). And this Court's

precedent indicates that State Representatives qualify given the duties and obligations of the offices they occupy. *See Green v. Stewart*, 516 S.W.2d 133, 135 (Tex. 1974).

The exercise of this Court's original jurisdiction is also warranted in these extraordinary circumstances. The State's petition implicates the organization and operation of the state government, a "question[] which [is] of general public interest and call[s] for a speedy determination." *In re Occidental Chem. Corp.*, 561 S.W.3d 146, 155 (Tex. 2018) (orig. proceeding) (citation omitted). Put simply, that question is whether a legislative minority of one chamber can frustrate the Legislature's duty to meet "when convened by the Governor," Tex. Const. art. III, § 5(a), by fleeing the State in an effort to disable the constitutional "quorum-forcing" authority of present members, *see In re Abbott*, 628 S.W.3d at 292.

Moreover, the facts here are undisputed: Respondents admittedly refused to attend the Special Session and fled the State to avoid the power of the present members to compel their attendance under article III, section 10. These undisputed facts form the basis for the petition and make this petition ripe for resolution by this Court.

II. Under the common law, the undisputed facts warrant this Court declaring Respondents' offices vacant: "[I]n all cases where the officer relinquishes his office, and refuses to attend, he loses his office." Edward Coke, *The First Part of the Institutes of the Laws of England* 233b (London, Society of Stationers 1628) (cleaned up); *see also The Earl of Shrewsbury's Case*, (1611) 77 Eng. Rep. 798, 804-06, 9 Co. Rep. 46b, 50a-50b (listing the grounds of forfeiture of an office as "abusing, not using, or refusing").

Respondents not only refused to perform their "duty owed to constituents to participate in a legislative session," *In re Ford Motor Co.*, 165 S.W.3d 315, 322 (Tex. 2005) (orig. proceeding) (per curiam), but by breaking quorum, they rendered the Legislature as a whole unable to fulfill its constitutional function.

And by fleeing the State to break quorum—an apparently recent innovation—Respondents nullified the authority of the present members to compel their attendance, directly attacking article III, section 10, "one of the foundational constitutional rules governing the law-making process in Texas." *In re Abbott*, 628 S.W.3d at 292. Respondents' actions, if permissible, would impose precisely the "absolute supermajoritarian check on the legislature's ability to pass legislation opposed by a minority faction" rejected by this Court four years ago. *Id.* at 297.

The State's petition for writs of quo warranto reinforces, rather than undermines, the separation of powers. The Attorney General filed this petition only when the Legislature proved unable to transact business and unable to compel the attendance of absent members. Without a quorum and with members of the legislative minority outside the State's borders, the Legislature's powers over its members were illusory. To restore the "careful balance" that this Court recognized in *In re Abbott*, it should declare vacant the offices of Respondents, who fled the State to avoid their constitutional duties, and consequently prevent future legislators from doing the same.

ARGUMENT

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

"A writ of quo warranto is an extraordinary remedy available to determine disputed questions about the proper person entitled to hold a public office and exercise its functions." *State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489, 490 (Tex. 1996) (orig. proceeding) (citing *State ex rel. R.C. Jennett v. Owens*, 63 Tex. 261, 270 (1885)). "[Q]uo warranto proceedings are those through which the State acts to protect itself and the good of the public generally, through the duly chosen agents of the State who have full control of the proceeding." *Fuller Springs v. State ex rel. City of Lufkin*, 513 S.W.2d 17, 19 (Tex. 1974) (citations omitted). A writ of quo warranto "is the exclusive legal remedy afforded to the public by which it may protect itself against the usurpation or unlawful occupancy of a public office by an illegal occupancy." *Hamman v. Hayes*, 391 S.W.2d 73, 74 (Tex. App.—Beaumont 1965, writ ref'd) (citations omitted).

A. The writ of quo warranto is a longstanding, common-law remedy to recognize a vacancy in office.

Quo warranto actions have a long, storied pedigree at common law dating back to at least "the thirteenth century." *Annunciation House*, 2025 WL 1536224, at *3; *see also* James L. High, *Treatise on Extraordinary Legal Remedies, Embracing Mandamus, Quo Warranto, and Prohibition* § 593, at 425 (Chi., Callaghan & Co. 1874) (identifying the "earliest case upon record" as being in 1198). "The ancient writ of quo warranto was a high prerogative writ, in the nature of a writ of right for the king, against one who usurped or claimed any office, franchise or liberty of the crown, to

inquire by what authority he supported his claim, in order to determine the right." High, *supra*, § 592, at 424; *see* 3 Blackstone, *supra*, at *262.

Such writs were "originally returnable before the king's justices at Westminster," 3 Blackstone, *supra*, at *262 (cleaned up), but later were "issued by royal courts or 'eyres' traveling throughout England that enquired by what authority—in Latin, *quo warranto*—a person who claimed or usurped any office, franchise, liberty, or privilege belonging to the crown maintained his right to do so," *Annunciation House*, 2025 WL 1536224, at *3 (cleaned up) (quoting 1 W.S. Holdsworth, *A History of English Law* 229-30 (3d ed. 1922)). The writ was also historically available "in the case of non-user or long neglect of a franchise, or mis-user or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse." 3 Blackstone, *supra*, at *262 (cleaned up). "Upon proof of either mal-user, or non-user, the eyre would revoke the claimed franchise back to the crown." *Annunciation House*, 2025 WL 1536224, at *3 (cleaned up) (quoting 1 Holdsworth, *supra*, at 89).

"The earliest case upon record is said to have been in the ninth year of Richard I., A.D. 1198, and was against the incumbent of a church, calling upon him to show quo warranto he held the church." High, *supra*, § 593, at 425 (citing *Darley v. The Queen*, (1893) 8 Eng. Rep. 1513, 1520, 12 Cl. & Fin. 520, 537). The writ was also "frequently employed during the feudal period, and especially in the reign of Edward I., to strengthen the power of the crown." *Id.* In response to excesses of the Crown in seizing long-held estates, Parliament enacted the Statute of Gloucester and Statute of Quo Warranto to "prun[e]" the writ "of its harsher and more oppressive

features" by "restraining the excesses of the royal prerogative, and by affording [the subject] a more convenient forum for the protection of his franchises, in the county where he resided." *Id.* § 598, at 430; *see also id.* §§ 594-97, at 426-30. *See generally* Edward Coke, *The Second Part of the Institutes of the Laws of England*, at 280-81, 494-99 (London, M. Fletcher & R. Young 1642) (describing the circumstances leading to the enactment of these statutes).

Eventually, "the writ of quo warranto gave way to the 'information in the nature of quo warranto.'" *Annunciation House*, 2025 WL 1536224, at *4 (quoting Comment, *Quo Warranto and Private Corporations*, 37 Yale L.J. 237, 238 (1927)). "The information in the nature of a writ of quo warranto was, as its name suggests, 'originally a criminal proceeding designed to punish the usurper of a franchise,' akin to the criminal information still used in Texas criminal procedure." *Id.* (quoting W.S. Holdsworth, *The History of the Criminal Information*, 1 Can. Bar Rev. 300, 301 (1923)). But "[d]espite its criminal-law roots . . . the information in the nature of quo warranto 'developed into a purely civil proceeding' and remains 'exclusively' civil today." *Id.*

"The substitution of the information in lieu of the original writ, is attributed by Blackstone to the length of the process upon the proceeding in quo warranto, as well as to the fact that the judgment rendered therein, it being in the nature of a writ of right, was final and conclusive, even against the crown." High, *supra*, § 600, at 431 (capitalization omitted) (citing 3 Blackstone, *supra*, at *263). "An additional cause for the gradual disuse of the ancient writ may perhaps be found in the fact that it was purely a civil remedy, while the information was at first used both as a civil and

criminal process, and resulted in a fine against the usurper, as well as judgment of ouster or seizure." *Id.* Nevertheless, although the information "almost entirely displaced the" ancient writ, the information still laid "in all cases where the ancient writ itself could have been maintained." *Id.* § 600, at 431-32 (citation omitted); *see also Annunciation House*, 2025 WL 1536224, at *4 ("Under either procedure, defendants had to show 'by what authority' they purported to exercise some governmentally sanctioned power."). "No other substantive difference developed, so over time, 'the information of quo warranto . . . became identical in scope with the older remedy, and the two have for all practical purposes become indistinguishable.'" *Annunciation House*, 2025 WL 1536224, at *4 (alteration in original) (quoting *Quo Warranto and Private Corporations*, *supra*, at 238–39).

Like the ancient writ, "the information in the nature of quo warranto was employed exclusively as a prerogative remedy" and was "exhibited by the king's attorney general." High, *supra*, § 602, at 433-34; *see also id.* § 603, at 435 ("The original writ of quo warranto was strictly a civil remedy, prosecuted at the suit of the king by his attorney general[.]" (citing 3 Blackstone, *supra*, *263)). Parliament later extended this remedy to private citizens when it enacted the Statute of Anne, "authoriz[ing] the filing of the information, by leave of court, upon the relation of any person desirous of prosecuting the same, for usurping or intruding into any municipal office or franchise in the kingdom." *Id.* § 602, at 433-34 (citation omitted); 9 Ann. c. 25 (Eng.), *reprinted in 9 The Statutes of the Realm* 483 (John Raithby ed., London 1822).

Ultimately, "[t]he most frequent use to which the information [was] put in England [was] to determine the right to municipal offices and franchises, and its use as a means of testing the title to the franchise of private corporations in that country [was] of comparatively rare occurrence." High, *supra*, § 608, at 439.

"[Q]uo warranto subsequently followed English lawyers to the American colonies" and "survived the American Revolution, too," albeit with a focus on "addressing abuse of corporate charters." *Annunciation House*, 2025 WL 1536224, at *4-5 (citation omitted); *see also* High, *supra*, § 623, at 453 ("In this country, . . . the [writ] has been most frequently exercised for the purpose of determining disputed questions of title to public office, and for deciding upon the proper person entitled to hold the office and exercise its functions."). Still, "[a]side from corporate malfeasance," quo warranto proceedings "continue to be filed in other areas, such as challenges to improper usurpation of an elected office." *Annunciation House*, 2025 WL 1536224, at *7 (citing *State ex rel. McKie v. Bullock*, 491 S.W.2d 659, 661 (Tex. 1973) (per curiam)).

From its early days as a Republic, Texas adopted this "Common Law of England" on quo warranto as its "rule of decision." *Id.* at *5 (*citing* Act approved Jan. 20, 1840, 4th Cong., R.S., § 1, 1840 Repub. Tex. Laws 3, 4, *reprinted in* 2 H.P.N. Gammel, *The Laws of Texas 1822–1897*, at 177–78 (1898)). Then in 1876, the People of Texas constitutionalized the quo warranto power, granting the Attorney General authority to bring quo warranto proceedings. *Id.* at *6 (discussing Tex. Const. art. IV, § 22). Thus, in this State, "[t]he purpose of a quo warranto proceeding is to question the right of a person or corporation, including a municipality, to exercise a

public franchise or office." *In re Dallas County*, 697 S.W.3d 142, 152 (Tex. 2024) (orig. proceeding) (quoting *Alexander Oil Co. v. City of Seguin*, 852 S.W.2d 434, 436-37 (Tex. 1991)). Such writs remain "available to determine disputed questions about the proper person entitled to hold a public office and exercise its functions." *Hardberger*, 932 S.W.2d at 490 (citing *Owens*, 63 Tex. at 270).

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

The Texas Constitution and statutes supply this Court with original jurisdiction to issue writs of quo warranto. *Id.* (citing Tex. Const. art. V, § 3; Tex. Gov't Code § 22.002(a)); *Annunciation House*, 2025 WL 1536224, at *7 (citations omitted); *In re Lutz*, No. 03-11-00500-CV, 2011 WL 5335406, at *1 (Tex. App.—Austin Nov. 2, 2011, no pet.) ("The Texas Supreme Court, not the courts of appeals, is vested with the power to issue writs of *quo warranto*." (citations omitted)). The Attorney General, proceeding on behalf of the State, is a proper relator to seek writs of quo warranto, and these thirteen legislators are proper respondents.

1. The State of Texas may petition for writs of quo warranto to declare offices vacant. *Wright*, 2 Tex. at 159-60; *State v. S. Pac. R.R. Co.*, 24 Tex. 80, 117-19 (1859); *see also Neb. Territory v. Lockwood*, 70 U.S. 236, 239 (1865) (citing *Wright*, 2 Tex. 158). And the Attorney General properly "represent[s] the State in all suits and pleas in the Supreme Court of the State in which the State may be a party." Tex. Const. art. IV, § 22. Because this Court has consolidated the State's petition with the Governor's petition and the Governor seeks relief encompassed within the relief requested by the State, it is unnecessary for this Court to address whether the Governor has

the independent authority to petition for a writ of quo warranto. *See State v. Loe*, 692 S.W.3d 215, 226 (Tex. 2024) (relying on the principle that "the existence of one plaintiff with standing is sufficient to confer jurisdiction" (citation omitted)); *Heckman v. Williamson County*, 369 S.W.3d 137, 152 n.64 (Tex. 2012) (holding that, where multiple plaintiffs "seek the same [injunctive or declaratory] relief," a court "need not analyze the standing of more than one plaintiff" because the same "relief would issue regardless of the standing of the other plaintiffs").

2. These legislators are also proper respondents in a quo warranto proceeding. The Constitution permits the Legislature to "confer original jurisdiction on [this] Court to issue writs of quo warranto . . . , except as against the Governor of the State." Tex. Const. art. V, § 3. And in 1892, the Legislature gave this Court that jurisdiction. Act of Apr. 13, 1892, 22d Leg., 1st C.S., ch. 14, § 1, art. 1012, 1892 Tex. Gen. Laws 19, 21. The current version of that statute, Government Code section 22.002(a), authorizes this Court to issue "all writs of quo warranto . . . agreeable to the principles of law regulating those writs, against . . . any officer of state government except the governor, the court of criminal appeals," and that court's judges. Tex. Gov't Code § 22.002(a).

This Court has original jurisdiction to issue writs of quo warranto against members of the Legislature, who are encompassed within the statutory phrase "officer of state government." *See* Tex. Gov't Code § 22.002(a). As this Court has long held, an "officer" is a person upon whom the "sovereign function of the government is conferred . . . exercised by him for the benefit of the public largely independent of the control of others." *Green*, 516 S.W.2d at 135 (quoting *Aldine Indep. Sch. Dist. v.*

Standley, 280 S.W.2d 578, 583 (Tex. 1955)). That is, an officer is "one who (a) performs governmental functions, (b) in his own right, (c) involving some exercise of discretion." *Id.*

Members of the Legislature qualify under those definitions. The thirteen State Representatives here, as members of the Legislature, exercise the "Legislative power of this State"—power that is conferred on them directly by the Constitution, not by another officer. *See* Tex. Const. art. III, §§ 1-2. To effectuate that power, they are tasked with introducing bills and resolutions, "hold[ing] hearings to consider all bills and resolutions and other matters then pending," and "act[ing] upon such bills and resolutions." *Id.* art. III, § 5(b). They perform these functions in their own right, not at the direction of another. And members of the Legislature exercise broad discretion to propose and enact laws that they believe would benefit the people of the State. *See, e.g.*, *In re Nestle USA, Inc.*, 387 S.W.3d 610, 623 (Tex. 2012) (orig. proceeding); *Tex. Boll Weevil Eradication Found., Inc. v. Lewellen*, 952 S.W.2d 454, 461 (Tex. 1997); *see also* High, *supra*, § 625, at 454 ("An office, such as to properly come within the legitimate scope of a quo warranto information may be defined as a public position, to which a portion of the sovereignty of the country, either *legislative*, executive or judicial, attaches for the time being, and which is exercised for the benefit of the public." (emphasis added)).

The text of the Constitution confirms what this Court's precedent makes plain by repeatedly referring to members of the Legislature as "state officers." For example, the Constitution requires "[m]embers of the Legislature . . . and all other elected and appointed state officers" to take a prescribed oath or affirmation of

office. Tex. Const. art. XVI, § 1(c). Each Respondent swore to "faithfully execute the duties of the office of [State Representative] of the State of Texas," *id.* art. XVI, § 1(a), and thus became an "officer of state government" subject to this Court's original jurisdiction to issue writs of quo warranto, *see* Tex. Gov't Code § 22.002(a).

Another section of the Constitution speaks to "elected or appointed officer[s] of the state . . . ente[ring] active duty in the armed forces of the United States as a result of being called to duty, drafted, or activated," explaining that this service "does not vacate the office held, but the appropriate authority may appoint a replacement to serve as temporary acting officer." Tex. Const. art. XVI, § 72(a). These "officer[s] of the state" include Legislators: "For an officer who is a member of the legislature, the member of the legislature shall select a person to serve as the temporary acting representative or senator." *Id.* art. XVI, § 72(c). Another provision adds that "[n]o member of the Legislature of this State may hold any *other office* . . . under this State." *Id.* art. XVI, § 40(d) (emphasis added). And yet another provides that "vacancies in State . . . offices, *except members of the Legislature*, shall be filled unless otherwise provided by law by appointment of the Governor." *Id.* art. IV, § 12(a) (emphasis added).

The language of section 22.002 also demonstrates that the phrase "officer of state government" extends beyond the executive department. After all, this Court's writ power extends to "any officer of state government except . . . a judge of the court of criminal appeals," Tex. Gov't Code § 22.002(a), which confirms that these judges constitute "officer[s] of state government" who would otherwise be within

this Court's original writ jurisdiction. And section 22.002 grants this Court exclusive original jurisdiction over certain writs against "the officers of the *executive departments* of the government of this state." *Id.* § 22.002(c) (emphasis added). The use of this narrower phrase limiting this Court's *exclusive* original jurisdiction to executive officers, *id.*, confirms that the broader phrase "any officer of state government," *id.* § 22.002(a), extends beyond executive officers—including to legislators.

This power is, of course, limited to *officers* of the State. In a series of cases, this Court has explained that its original writ jurisdiction does not extend to every person who occupies a post in the executive branch, "but only to chief administrative officers—the heads of State departments and agencies who are charged with the general administration of State affairs." *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 776 (Tex. 1999) (orig. proceeding) (citations omitted). Boards and commissions do not meet that definition. *Id.*; *Superior Oil Co. v. Sadler*, 458 S.W.2d 55, 56 (Tex. 1970) (per curiam) (citations omitted); *Betts v. Johnson*, 73 S.W. 4, 5 (Tex. 1903). Nor do mere employees. *Green*, 516 S.W.2d at 135.

Perhaps because of the sheer volume of decisions that executive officers make—and the broad span of officials who may make them—the majority of this Court's cases focus on identifying the "officers of the executive departments" subject to this Court's original writ power, and not on identifying the legislative and judicial officers who come under that power. *See, e.g.*, *Paxton v. Am. Oversight*, No. 24-0162, 2025 WL 1793117, at *5 (Tex. June 27, 2025); *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 672 (Tex. 1995); *Malone v. Rainey*, 133 S.W.2d 951 (Tex. 1939) (per curiam). Nothing in that body of jurisprudence holds that the office of "State Representative"

falls outside this Court's original writ jurisdiction. Instead, the opposite is true: the Constitution and this Court's precedent confirm that State Representatives are "officers of state government" within the meaning of section 22.002(a). *Supra* pp. 18-19. This Court should "reject the [Respondents'] attempt to remove" themselves "from the reach of [its] writ authority." *In re Tex. House of Representatives*, 702 S.W.3d 330, 339 (Tex. 2024) (orig. proceeding).

C. This petition warrants the exercise of this Court's original jurisdiction.

Once satisfied that this Court *can* exercise jurisdiction over the State's petition, *supra* pp. 17-22, it *should* exercise its original jurisdiction, too. Because this Court is "designed primarily as the court for the correction by appellate review of errors of inferior courts," "there must be some strong and special reason for the exercise of this extraordinary original jurisdiction." *Love v. Wilcox*, 28 S.W.2d 515, 519 (Tex. 1930) (orig. proceeding). Such a reason exists when a petition "involves questions which are of general public interest and call for a speedy determination" and "urgent necessity calls for the exercise of the original jurisdiction." *In re Occidental Chem. Corp.*, 561 S.W.3d at 155 (citations omitted).

The same "compelling reasons" that justified this Court's exercise of its discretion to decide an original quo warranto petition—"without first requiring presentation to the district court"—in *State ex rel. Angelini v. Hardberger* also justify the exercise of that discretion here. 932 S.W.2d at 490.

1. To start, "time is of the essence." *Id.* The Governor called a Special Session of the Legislature, which began on July 21, QWR.122-24, and ended on August 15—

because of Respondents' actions—without a quorum. Despite the State's diligent efforts, which included expeditiously filing this action and emergency petitions to enforce House-issued civil arrest warrants in Illinois and California, *supra* p. 7, the State was unable to secure the return of Respondents and a quorum for the House, *see* Supp.QWR.215.

Although the Governor has now called a second Special Session and quorum was achieved on August 18, there is no guarantee that Respondents—or other State Representatives—will not again flee the State and deprive the House of a quorum. This issue warrants the "speedy, final determination" that is "possible only through the exercise of jurisdiction elsewhere than in the district court." *Love*, 28 S.W.2d at 520.

2. In addition, important legal consequences flow from this decision. The purpose of the Special Session is to consider and act upon legislation critical to the interests of the State, potentially including "a congressional redistricting plan" to be used in the March primary elections. Supp.QWR.149-50. As in *Hardberger*, "[t]he candidates should know their status as soon as possible." 932 S.W.2d at 490.

The legal issue before this Court is whether a legislative minority of one chamber can stymie the ability of the Texas Legislature to carry out its constitutional charge to meet "when convened by the Governor." *See* Tex. Const. art. III, § 5(a). The State's petition concerns nothing less than the frustration of the "rights of citizens to participate in government" through their elected representatives due to the abdication of duty by Respondents, an issue of wide public interest and of grave importance to the State. *See Love*, 28 S.W.2d at 520. This weighty public-law question merits an answer by this Court, as it is one that may recur in future legislative

sessions given the increasing frequency of this novel quorum-breaking tactic. *See infra* pp. 41-42 .

3. Finally, the exercise of original jurisdiction by this Court is warranted because the relevant facts are undisputed. *See Hardberger*, 932 S.W.2d at 490. Respondents admitted that they fled the State for the purpose of depriving the House of a quorum and evading the power of the remaining members to compel their attendance. *See supra* pp. 3-5.

Despite the Speaker's issuance of arrest warrants, the Governor's orders to enforce them, and the Attorney General's lawsuits to enforce them in other states, the efforts of the remaining members of the House to compel the absent members' attendance were ineffective. *See supra* pp. 6-8. These tactics succeeded when the first Special Session ended with the House unable to conduct business and remaining members unable to compel Respondents' attendance. *Supra* p. 8.

These facts—Respondents' willful refusal to perform the duties of their offices (for the purpose of preventing the House as a whole from conducting business) while evading the authority of the remaining members under article III, section 10—are the key facts on which the State relies to seek writs of quo warranto, *see infra* pp. 3-7, and they are undisputed, *supra* pp. 3-5. To the extent that Respondents may contend that factual disputes exist regarding ancillary issues, such as the extent to which they continued to carry out some duties while outside the State, none of those issues "is involved in resolving the dispositive legal question in [this] dispute." *See In re Occidental Chem. Corp.*, 561 S.W.3d at 157.

Although the existence of a vacancy often "will be a fact question," Tex. Att'y Gen. Op. KP-0382, at 2 (2021) (citation omitted), it can be resolved as a matter of law when, as here, the facts are undisputed, *see, e.g.*, *United Supermarkets, LLC v. McIntire*, 646 S.W.3d 800, 802 (Tex. 2022) (per curiam) ("[U]ndisputed facts demonstrate that [a condition] was not unreasonably dangerous as a matter of law."); *Stanfield v. Neubaum*, 494 S.W.3d 90, 103 (Tex. 2016) ("The judicial error was not a reasonably foreseeable result of the Attorneys' negligence in view of all the undisputed facts at the time it occurred.").

Contrary to Respondents' assertions, resolving this petition would not infringe upon their right to a jury trial. As an initial matter, this Court has never held that the right to trial by jury enshrined in the Texas Constitution extends to quo warranto petitions. *See Bradley v. State ex rel. White*, 990 S.W.2d 245, 250 (Tex. 1999) (ruling that a quo warranto petition against a mayor failed on the merits and therefore not addressing a right-to-jury-trial argument). And there are at least three good reasons to conclude that the right does not so extend.

First, 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." *See White v. White*, 196 S.W. 508, 512 (Tex. 1917) (citation omitted). *Second*, quo warranto is a limited remedy narrowly focused on "the right of the defendant to hold public office," 65 Am. Jur. 2d *Quo Warranto* § 106, and intended to provide "speedy and effectual" relief, *id.* § 105. Thus, quo warranto proceedings may lack the "essential characteristics of a cause." *In re Troy S. Poe Tr.*, 646 S.W.3d 771, 787 (Tex. 2022) (Busby J., concurring). And

third, by granting original jurisdiction to this Court to hear quo warranto proceedings, section 22.002 appears to contemplate "a determination by the court alone without the intervention of a jury." *See State ex rel. McKittrick v. Williams*, 144 S.W.2d 98, 105 (Mo. 1940). Several other state supreme courts have reached this same conclusion. *See State ex rel. Davis v. City of Avon Park*, 158 So. 159, 162 (Fla. 1934) ("[N]o such right to a jury trial in quo warranto cases exists in this court."); *State ex rel. Olson v. Langer*, 256 N.W. 377, 392 (N.D. 1934) (rejecting the argument that the exercise of jurisdiction "would deny respondent the right of trial by jury").

In all events, this Court need not decide whether the right to a jury trial might apply to quo warranto proceedings generally because that right does not attach in *this* case. In *Crawford v. State*, the Seventh Court of Appeals rejected the argument that an individual was entitled to a jury trial in a quo warranto proceeding, noting that there was nothing "present in the case that would require impaneling a jury" given "the absence of a controverted issue of fact." 153 S.W.3d 497, 507 (Tex. App.—Amarillo 2004, no pet.) (citations omitted). The same is true here. "The inviolate right to a jury trial is regulated by those [r]ules which specify its availability." *Green v. W.E. Grace Mfg. Co.*, 422 S.W.2d 723, 725 (Tex. 1968). The right to trial by jury depends on material questions of fact for a jury to resolve. Where, as here, there are no material questions of fact, "there is nothing to submit to a jury," and a "grant of summary judgment cannot violate a party's constitutional right to a jury trial." *Martin v. Com. Metals Co.*, 138 S.W.3d 619, 627 (Tex. App.—Dallas 2004, no pet.); *Lattrell v. Chrysler Corp.*, 79 S.W.3d 141, 150 (Tex. App.—Texarkana 2002, pet. denied); *see also* 68 Tex. Jur. 3d *Summary Judgment* § 3 ("[I]f there is nothing to submit

to a jury, then the grant of summary judgment cannot violate a party's constitutional right to a jury trial." (citation omitted)). In the same way that summary judgment does not violate the right to trial by jury because there are no disputed questions of fact for a jury to resolve, the exercise of this Court's original jurisdiction to decide a petition for writ of quo warranto on the merits does not infringe the right of trial by jury. *See Hardberger*, 932 S.W.2d at 490-91 (exercising original jurisdiction and resolving a petition for quo warranto on the merits because "there are no disputed issues of fact").

* * *

This Court has original jurisdiction to declare Respondents' offices vacant and should exercise that jurisdiction to do so.

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

This Court has recognized that the writ of quo warranto was "part of Texas law from the beginning," including when "the Common Law of England" was adopted "as the rule of decision in this Republic." *Annunciation House*, 2025 WL 1536224, at *5 (citation omitted); *see also* Tex. Civ. Prac. & Rem. Code § 5.001(a). And from its very origins, the common law has recognized that an office could be vacated by its holder's refusal to perform his attendant duties: "In all cases where the officer relinquishes his office, and refuses to attend, he loses his office." Coke, *First Part of the Institutes of the Laws of England*, *supra*, at 233b (cleaned up). These principles have carried forward in substance from England to America—with slight changes in language—to the present day.

A. Public officials lose their offices through misuse, non-use, and refusal.

1. Lord Coke—"one of the most storied lawyers and judges of the common-law tradition," *JDH Pac., Inc. v. Precision-Hayes Int'l, Inc.*, 659 S.W.3d 449, 450 (Tex. 2022) (Young, J., concurring in the denial of the petition for review)—listed three causes for forfeiture of an office: "abusing, not using, or refusing" to use an office, *The Earl of Shrewsbury's Case*, 77 Eng. Rep. at 804-05, 9 Co. Rep. at 50a-50b.

"Abusing"—that is, "misusing"—an office caused a forfeiture when, for example, a "marshal, or other goaler suffer voluntary escapes." *Id.* at 804, 9 Co. Rep. at 50a. Simple nonuser was sufficient to forfeit an office "concern[ing] the administration of justice or the commonwealth" which "the officer . . . ought to attend without any demand or request." *Id.* at 804-05, 9 Co. Rep. at 50a-50b. But where an office concerned private rights—even where an officer was bound to fulfill his duties without request—if no such request was made then "non-user or non-attendance [was] no cause of forfeiture unless the non-user or non-attendance [was] cause of prejudice or damage." *Id.* at 805, 9 Co. Rep. at 50b. On the other hand, where "an officer [was] bound upon request to exercise his office" and a request was made, an officer's failure to exercise the duties of his office—regardless of consequence to the requestor—constituted "refusal" and effected forfeiture. *Id.* Thus, the distinction between "non-user" and "refusal" largely depended on whether an official was under a duty "to attend without any demand or request" or only "bound upon request to exercise his office." *See id.* at 804-05, 9 Co. Rep. at 50a-50b.

William Hawkins, commenting in the early eighteenth century, listed "neglect, or breach of duty," as a category of offense for which an office could be forfeited, noting that "he who either neglects or refuses to answer the end for which his office was ordained should give way to others who are both able and willing to take care of it." 1 William Hawkins, *A Treatise of the Pleas of the Crown* 167 (London, Eliz. Nutt 1716) (cleaned up). Hawkins agreed that not every instance of "bare non-user" would result in forfeiture—even of offices "concerning the administration of justice, or the commonwealth"—but declined to "enumerate all the particular instances wherein an officer may be discharged or fined because they are generally so obvious to common sense, as to need no explication." *Id.* at 168 (cleaned up). Hawkins' articulation of the rule of forfeiture simply stated that "it cannot but be very reasonable that he who so far neglects a public office, as plainly to appear to take no manner of care of it, should rather be immediately displaced than the public be in danger of suffering that damage which cannot but be expected sometime or other from his negligence." *Id.* (cleaned up).

And Blackstone—"whose Commentaries on the Laws of England not only provided a definitive summary of the common law but was also a primary legal authority for 18th- and 19th-century lawyers," *Washington v. Glucksberg*, 521 U.S. 702, 712 (1997)—explained that the writ of quo warranto lies in the "case of non-user or long neglect of a franchise," and is available when a defendant has "forfeited [an office] by neglect or abuse." 3 Blackstone, *supra*, at *262 (cleaned up).

English cases from this period reflected these principles. For example, "[t]he franchise of holding a court leet may be forfeited by neglecting to hold a court, when

it ought to be holden; at least if such neglects be often repeated and without a reasonable excuse." *The King v. Bridge*, (1749) 96 Eng. Rep. 25, 25, 1 Black. W. 46, 46-47. In *Tottersall's Case*, a franchisee was found to have forfeited the privilege of holding a court leet where he "had not used [the franchise] a great while, nor were there officers or other things for the execution of justice." (1632) 82 Eng. Rep. 149, 149, Jones. W. 283, 283-84.

On the other hand, where failure to hold a court leet appeared limited to a single instance and to concern only private rights, no forfeiture resulted. *The King v. Cann*, (1737) 95 Eng. Rep. 276, Andr. 14, 14-15. Likewise, because the office of "common-council-man of Bristol" was not "a public officer," a refusal to take office upon election did not work forfeiture. *The Queen v. Hungerford*, (1708) 88 Eng. Rep. 952, 952-53, 11 Mod. 142, 142-43. And Lord Mansfield held that though the office of town recorder was "a public office concerning the administration of justice," for which "non-attendance is a cause of forfeiture of [the] office, though no inconvenience ensue," nevertheless a single absence was not "sufficient to forfeit [the] office"—at least where his absence did not deny "a sufficient quorum." *Rex v. Corporation of Wells*, (1767) 98 Eng. Rep. 41, 45-46, 4 Burr. 1999, 2006-07.

Matthew Bacon's Abridgement endorses Lord Coke's list of grounds of forfeiture: abuse, non-user, and refusal. 3 Matthew Bacon, *A New Abridgement of the Law* 742 (London, His Majesty's Law-Printers 3rd ed. cor., 1768). With respect to refusal, Bacon notes that "if an officer acts contrary to the nature and duty of his office, or if he refuses to act at all, . . . the office is forfeited." *Id.* at 741 (cleaned up). After

all, the grant of every office implies that the grantee "execute it faithfully and diligently." *Id.*

2. American treaties and cases reflect the same understanding. "[Q]uo warranto subsequently followed English lawyers to the American colonies" and "survived the American Revolution, too." *Annunciation House*, 2025 WL 1536224, at *4. James High's *Treatise on Extraordinary Legal Remedies* discusses quo warranto at length. Citing Blackstone, High explains that the writ of quo warranto was "granted as a corrective of the mis-user, or non-user of a franchise" when an office was forfeited "by neglect or abuse." High, *supra*, § 592, at 424-25 (citing 3 Blackstone, *supra*, at *262). And in the United States, the writ of quo warranto was used to correct "non-user or misuser of a public office." *Id.* § 609, at 439.

The 1887 edition of *The American and English Encyclopedia of Law* agreed that a public official abandoned his office by "refus[ing] or neglect[ing] to perform the duties of his office for such a period as to warrant the presumption that he did not intend to perform them." *The American and English Encyclopedia of Law* 562c* (John Houston Merrill, ed., Long Island, N.Y., Edward Thompson Co. 1887).

The most significant early modern American treatise, however, is Floyd Mechem's *Treatise on Public Offices*. Floyd R. Mechem, *A Treatise on the Law of Public Offices and Officers* (Chi., Callaghan & Co. 1890). This Court has repeatedly quoted and approvingly cited Mechem's work. *See Kimbrough v. Barnett*, 55 S.W. 120, 122 (Tex. 1900) (quoting Mechem, *supra*, § 1, at 1-2); *Campbell v. Jones*, 264 S.W.2d 425, 427 (Tex. 1954) ("The true rule is stated in Mechem on Public Officers[.]"); *Dorenfield v. State ex rel. Allred*, 73 S.W.2d 83, 87 (Tex. 1934) ("[T]he governing law is

succinctly expressed in Mechem on Public Officers[.]"). Mechem lists five acts and events that would constitute "abandonment":

> An office may also become vacant by its abandonment by the officer. Such an abandonment may be evidenced by a variety of acts and events, and, while the classification may not be the best possible, there will, for convenience sake, be treated under this head, the vacation or abandonment of the office: by refusing or neglecting to qualify; by refusing or neglecting to perform the duties; by removing from the district; by engaging in rebellion; by death.

Mechem, *supra*, § 432, at 276 (cleaned up). Some of these forms of "abandonment," such as rebellion, did not require judicial determination. *Id.* § 441, at 281 ("[N]o judicial determination is necessary to determine the fact of the forfeiture."). And, of course, "abandonment" through death was likewise self-executing. *Id.* §§ 441-42, at 281-82.

Most relevant here, Mechem recognizes that "continued refusal or neglect to perform duties" constitutes a forfeiture of office. *Id.* § 435, at 278 (cleaned up).

> Public offices are held upon the implied condition that the officer will diligently and faithfully execute the duties belonging to them, and while a temporary or accidental failure to perform them in a single instance or during a short period will not operate as an abandonment, yet if the officer refuses or neglects to exercise the functions of the office for so long a period as to reasonably warrant the presumption that he does not desire or intend to perform the duties of the office at all, he will be held to have abandoned it[.]

Id. As support for this proposition, Mechem approvingly cites *People v. Kingston & M. Turnpike Road Co.*, which synthesized the rule from Bacon, Coke, Hawkins, and Mansfield:

> [T]he franchise of an office held upon the implied condition of diligently and faithfully executing the duties belonging to it, may be forfeited by general

> neglect, or wilful refusal to perform. The ingredient of a bad or corrupt motive need not enter into the cause; it is enough if the duty is neglected, or designedly omitted.

35 Am. Dec. 551 (N.Y. Sup. Ct. 1840) (cited by Mechem, *supra*, § 435 n.1, at 278-79). Except where context indicates otherwise, this brief uses "abandonment" in Mechem's sense, to refer to grounds for forfeiture—most specifically, to misuse, non-use, and refusal.

These forms of "abandonment" become effective (and the office vacant) only after a judicial determination. While "abandonment is clearly a cause for a forfeiture, it is ordinarily held that it does not of itself create a completed vacancy, but that a judicial determination of the fact is necessary to render it conclusive." Mechem, *supra*, § 436, at 280. Quo warranto is the recognized means of adjudicating whether such a forfeiture (that is, abandonment) has been effected through misconduct. *Id.* § 478, at 308 ("*Quo warranto* will also lie for the purpose of ousting an incumbent whose title to the office has been forfeited by misconduct or other cause." (citations omitted)). And for that adjudication, "it is not necessary that the question of forfeiture should ever before have been presented to any court for judicial determination, but the court, having jurisdiction of the *quo warranto* proceeding, may determine the question of forfeiture for itself." *Id.* (citations omitted).

As means of vacating an office distinct from "abandonment," Mechem recognizes that "public officer has the right to resign his office." *Id.* § 409, at 261. Resignation requires "an intention to relinquish a portion of the term of the office." *Id.* § 411, at 263. As John Minor's *Institutes*—a roughly contemporaneous treatise—explains, resignation "terminate[s] the office *proprio vigore*," of its own force and

without any need for a judicial determination. 2 John B. Minor, *Institutes of Common and Statutory Law* 33 (Richmond, 3rd ed., rev'd & cor., 1882).

During the same time period during which Mechem used "abandonment" as a general term for all forms of vacation of an office, *see* Mechem, *supra*, § 432, at 276, courts began to use the term "abandonment" in a different sense, to refer to implicit resignation. For example, in *Page v. Hardin*, the Court of Appeals of Kentucky (the predecessor to the modern Kentucky Supreme Court and the State's then-highest court) assumed without deciding that "an office may be vacated by abandonment" such that "the Governor [could] consider the office vacant, and [] fill it by a new appointment." 47 Ky. 648, 666 (1848). On this view, "voluntary relinquishment by abandonment"—which was admittedly not "one of the regular and recognized modes of vacating an office"—would "place the office at the disposal of the Governor as being vacant." *Id.* at 667. This differentiated "abandonment" from forfeiture, since forfeiture "d[id] not produce a vacation of the office, [except] upon conviction and judgment of amotion." *Id.* at 668; *see also id.* at 677 ("The Governor may fill, but cannot create vacancies in offices held by the tenure of good behavior."). Forfeiture, however, remained a recognized means by which a public office might become vacant. *Id.* at 666–67. And the court confirmed that "non-user, neglect of duty, or other official misconduct or abuse . . . constitute[d] just and legal grounds of forfeiture," and that a "right may be forfeited or lost by neglect or misconduct, though the party has continually asserted or claimed it." *Id.* at 666-68.

Under this view, if a public officer *resigned* (either expressly or through relinquishment by "abandonment"), a vacancy was created immediately upon the

resignation, which the appropriate authority (such as a governor) could immediately fill according to the law. But if a public officer undertook acts that would *forfeit* an office (including through the common-law grounds of misuser, non-user, or refusal), the office did not become vacant and thus could not be filled until after a judicial determination of the forfeiture.

Relying on *Page*, this Court applied these principles in *Honey v. Graham*. 39 Tex. 1 (1873). There, the Treasurer "had absented himself from the limits of the state—not on public business, and without leave of absence," so the Governor inferred that the office was vacant and appointed a new Treasurer to fill the office. *Id.* at 10–11. This Court explained that the Governor's appointment of a new Treasurer was proper only if the former Treasurer had "abandoned" his office in *Page*'s voluntary-relinquishment or resignation sense (rather than in Mechem's broader sense of "abandonment"), such that a vacancy existed without any need for judicial declaration. *See id.* at 12, 15-16 ("The power of the governor to fill a vacancy, when one exists, is not disputed. The power to create a vacancy is denied by every authority[.]"). After all, the Governor had "neither adjudicated nor assumed to adjudicate any question of forfeiture." *Id.* at 14. On the merits of the abandonment question, this Court held that the former Treasurer did not abandon his office because there was insufficient evidence that he, "in his own mind, ever intended to abandon his office." *Id.* at 15. As a result, the Governor could not appoint a successor. *See id.* at 15-16.

Notably, this Court did not address whether the former Treasurer *forfeited* his office through nonuser, misuser, or refusal, and it expressly recognized nonuser and

misuser as grounds for a loss of office. *See id.* at 16 ("I readily conceive that a right may be forfeited or lost by a nonuser or misuser, though the party continue to assert it; but the determination of the question, whether it be lost or not, is not a question for executive determination; there must first be a judgment of amotion before the executive can fill the vacancy."). That is because even if "more than one case might occur where the governor would be authorized in assuming that an office was vacant[,] . . . no case can occur under our constitution wherein the governor would be authorized to *adjudge* an office *forfeited*." *Id.* at 11. After all, the question of forfeiture "belongs to the judiciary." *Id.*

The Commission on Appeals applied these principles applied in *Steingruber v. City of San Antonio*, where the mayor appointed a new park commissioner, and the former park commissioner sued for the salary for the remainder of the term. 220 S.W. 77, 77-78 (Tex. Comm'n App. 1920, judgm't adopted). Because there had been no judicial determination, the mayor was entitled to fill the office only if the former park commissioner's acts had created a vacancy of their own force, such as through resignation. *See id.* at 78. The trial court's judgment that there had been no "abandonment" (again using "abandonment" in the voluntary-relinquishment sense) was supported by sufficient evidence, and the former commissioner was entitled to the salary. *Id.* ("Abandonment is a species of resignation."). As in *Honey*, only resignation (through abandonment) was at issue—not forfeiture through misuse, non-use, or refusal. *See id.*

Although it has never had occasion to apply the principle of forfeiture (rather than abandonment), this Court has never rejected the common-law rule that a public

office, like a corporate charter, can be forfeited on the grounds of "mis-user or non-user," *see Annunciation House*, 2025 WL 1536224, at *6, or other grounds. As *Honey* confirmed, Texas adheres to the common-law principle that "a right may be forfeited or lost by a nonuser or misuser, though the party continue to assert it" and that such a determination "belongs to the judiciary." 39 Tex. at 10-11.

B. This Court should declare Respondents' offices vacated.

1. Under common-law principles Respondents forfeited their offices through refusal.

This Court should apply these established common-law principles to declare that Respondents' offices are vacant. Although Respondents' conduct could fit within any of the traditional categories of forfeiture recognized by Lord Coke, it seems to fit most squarely within "refusal." Respondents quite literally "refuse[d] to attend" the Special Session and thus lost their offices. *See* Coke, *First Part of the Institutes of the Laws of England*, *supra*, at 233b. Even if Respondents were not required "to attend without any demand or request," they were undeniably "bound upon request to exercise [their] office[s]." *The Earl of Shrewsbury's Case*, 77 Eng. Rep. at 804-05, 9 Co. Rep. at 50a-50b.

The Texas Constitution makes Respondents' duties clear: As members of the House, Respondents must "meet every two years at such time as may be provided by law and at other times when convened by the Governor." Tex. Const. art. III, § 5(a). And they are tasked with introducing bills and resolutions, "hold[ing] hearings to consider all bills and resolutions and other matters then pending," and "act[ing] upon such bills and resolutions." *Id.* art. III, § 5(b). This Court has already

recognized "the duty owed to constituents [by legislators] to participate in a legislative session." *In re Ford Motor Co.*, 165 S.W.3d at 322.

Respondents received a request from the Governor to attend the Special Session and refused that request. *See supra* pp. 3, 6-7. They received a further request—indeed, command—from the Speaker to attend the Special Session, using the House's constitutional powers of compulsion under article III, section 10. *See supra* pp. 6-7. Again, Respondents refused to attend, going so far as to flee the State to avoid the majority's quorum-forcing powers. *See supra* p. 7.

Respondents have "refus[ed] to attend the duty of [their] office[s]." *Corporation of Wells*, 98 Eng. Rep. at 44-45, 4 Burr. at 2004-05. By breaking the quorum and fleeing the State, they "refused to answer the end for which their offices were ordained" and lost their claims to their offices. *See* 1 Hawkins, *supra*, at 167 (cleaned up).

Not only did Respondents "neglect to attend their duty at all usual, proper, and convenient times and places," *id.* at 167-68 (cleaned up), but the purpose and effect of their absence was to impair the power and operation of the Legislature as a whole, rendering it unable to serve its constitutional function and conduct the business for which it was assembled, *see supra* pp. 8, 24. Such misconduct goes beyond "refusal" to "misuse." Preventing the House from conducting business was "directly contrary to the [d]esign of" Respondents' offices. 1 Hawkins, *supra*, at 167.

Lawmakers who "refus[e] to qualify and perform the duties of the office," "have removed themselves from office, and their place is already vacant." *City of Williamsburg v. Weesner*, 176 S.W. 224, 226 (Ky. 1915). In such a circumstance "a court of equity can take cognizance of this situation and grant relief" by declaring

that the officeholders "have or have not forfeited their offices"—particularly where the absence of the lawmakers denies the body "a quorum." *Id.* Thus, a legislator's "neglect and abandonment of his duty to attend legislative sessions" may "creat[e] the vacancy in office." *Errichietti v. Merlino*, 457 A.2d 476,486 (N.J. Super. Ct. Law Div. 1982). After all, "[t]he duty of good faith execution of a public office without neglect of duty existed at common law." *Id.* (citing 63 Am. Jur. 2d *Public Officers and Employees* § 190, at 744).

Although Respondents have now returned to the State and apparently resumed their duties as legislators, resuming these duties cannot cure their past abandonment. *See* Mechem, *supra*, § 440, at 281 ("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." (citations omitted)).

2. Respondents cannot recast their refusal to exercise their legislative duties as a fulfillment of those obligations.

Respondents have suggested that by breaking quorum and avoiding the remaining members' power to compel their attendance, they acted within their duties as State Representatives. Their duty, as they see it, was to "do everything [they] can to stop" the passage of legislation they opposed. QWR.14; *see also* QWR.84 ("The people of Texas urged us to do anything we could to stop [legislation we oppose].").

But this argument views the duty of a legislator far too broadly. The duty of a legislator is not to prevent, by any means possible, the passage of undesirable legislation. This Court has described the "legislative power" as "the power to make, alter

and repeal laws." *Walker v. Baker*, 196 S.W.2d 324, 328 (Tex. 1946) (orig. proceeding) (citations omitted). Respondents, together with a quorum of the House, must "act upon . . . bills and resolutions" and "upon such emergency matters as may be submitted by the Governor." Tex. Const. art. III, § 5.

In these meetings, Respondents may oppose legislation using any "rules of . . . proceedings" determined by the House. *Id.* art. III, § 11. They may attempt to persuade their fellow legislators through debate and discussion. And they may, of course, vote against legislation that they oppose. *See id.* art. III, § 12. These means of opposition involve legislators fulfilling their duties and exercising the powers of their offices.

But not all means of opposition to legislation are within a legislator's duties. Refusing to attend the Legislature is not the exercise of the duties of a legislator's office—it is a refusal to exercise the duties of the office. Moreover, by preventing the formation of a quorum, Respondents prevented the Legislature as a whole from exercising its constitutional authority.

It would be equally erroneous to describe a judge's duty as "do[ing] everything [he] can to stop," *cf.* QWR.14, the issuance of a decision that the judge views as erroneous. A judge might, for example, refuse to attend an oral argument or refuse to release an opinion for the purpose of delaying an unfavorable decision. Such acts would violate, not fulfill, the judge's duties, even though they would, like the judicial act of writing a dissent, be directed to the end of opposing a decision that the judge believes to be incorrect. Like that of a legislator, a judge's responsibility is to fulfill the duties of his office, not to achieve a desired end using any conceivable means.

Moreover, even if quorum-breaking within the State were part of Respondents' duties, fleeing the State to deprive the majority of its quorum-forcing powers conflicts with the constitutional scheme recognized by this Court in *In re Abbott*. 628 S.W.3d at 292

3. Quorum-breaking outside the State is a recent innovation.

Although there is a history of quorum-breaking in Texas, the advent of fleeing the State to do so appears to be of recent vintage. "[T]he present members of each chamber [have] a remedy against the absent members when a quorum is lacking." *Id.* "Just as article III, section 10 enables 'quorum-breaking' by a minority faction of the legislature, it likewise authorizes 'quorum-forcing' by the remaining members." *Id.* This provision "ensures that the legislature can continue to do business despite efforts by a minority faction to shut it down by breaking quorum." *Id.* at 297.

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. In 1870, for example, state senators were arrested and brought to the Senate to secure a quorum. *See Understanding the Rump Senate of the Twelfth Texas Legislature*, Tex. State Hist. Ass'n (June 1, 1995), https://perma.cc/E8TR-YHTA. Likewise, in 1979, the "Killer Bees" quorum breakers hid in a garage apartment in Austin. *See* Supp.QWR.176-77. These events reflect the "careful balance" of the quorum-breaking power of a minority faction and quorum-forcing power of the remaining members. *In re Abbott*, 628 S.W.3d at 292.

The innovation of a minority faction fleeing the State to avoid the present members' quorum-forcing powers appears to date to 2003, when House Democrats fled

to Oklahoma and Senate Democrats later fled to New Mexico. And it was just four years ago that this Court confirmed the authority of the Texas Legislature to subject quorum breakers "to arrest and compelled attendance," *id.* at 294, and almost immediately after that decision, the quorum breakers returned and exercised the duties of their offices, *see* Supp.QWR.152-59.

Respondents' conduct of fleeing the State thus has a pedigree of roughly 20 years, and Respondents' attempt to prevent the Legislature from fulfilling its constitutional duty marks the first since this Court's analysis of the Texas Constitution's quorum-forcing provisions in *In re Abbott*, 628 S.W.3d at 292. By fleeing the State, Respondents avoided arrest and could not be compelled to attend. Their actions, if permissible, would upset the "careful balance" of powers that this Court recognized in *In re Abbott*, leaving the Texas Legislature unable to force a quorum and the people of Texas without a body capable of exercising legislative power. Respondents' conduct, if blessed by this Court, would "impose an absolute supermajoritarian check on the legislature's ability to pass legislation opposed by a minority faction." *Id.* at 297. Respondents did not merely disregard their constitutional duty to meet but also flouted the Legislature's authority under article III, section 10—the provision intended to "ensur[e] that the legislature can continue to do business despite efforts by a minority faction to shut it down by breaking quorum." *Id.*

4. Granting this petition reinforces separation of powers.

This Court requested that the parties address the "import of the House of Representatives' authority" under the Texas Constitution. The State petitioned for writs of quo warranto only when it became clear that the House was unable to

exercise its constitutional authority and compel a quorum. Granting the State's petition and restoring that authority reinforces the separation of powers.

As an initial matter, the State's petition does not challenge the "qualifications for election" of members of the House. Tex. Const. art. III, § 8 (cleaned up). To be qualified, a State Representative must:

> be a citizen of the United States; at the time of his election, be a qualified voter of this State; have been a resident of this State two years next preceding his election, including having been a resident of the district for which he shall be chosen for the last year; and have attained the age of twenty-one years.

Id. art. III, § 7 (cleaned up). None of these qualifications is at issue in the State's petition. The State does not contend that Respondents are unqualified to serve as State Representatives—only that they vacated their offices.

Article III, section 11 allows the House to "determine the rules of its own proceedings . . . and, with the consent of two-thirds, expel a member." *Id.* art. III, § 11. If a single legislator, acting alone, refused to perform the duties of the office, then expulsion by consent of two-thirds of the House might well provide an adequate remedy. *See, e.g.*, Supp.QWR.204-14 (expelling a State Representative for sexual misconduct). But the State filed this petition because the House lacked the two-thirds quorum necessary to conduct business, including modifying its rules or expelling Respondents. *See supra* pp. 8, 24. In these circumstances, a concerted effort by a legislative minority faction can reduce the authority of the House to a fiction. After all, there is no power to expel absent a quorum.

Nor can the remaining House members effectively exercise their authority in those circumstances to "compel the attendance of absent members." *See* Tex. Const. art. III, § 10. As Respondents admitted, they fled to other states to seek "safe harbor" from the remaining members' power to compel their attendance. QWR.44. Fleeing the State was effective: Respondents avoided arrest, and the majority was unable to compel their attendance. This innovation of fleeing the State to nullify the remaining members' quorum-forcing powers distinguishes these circumstances from historical quorum breaks in which minority legislators remained subject to arrest and compulsion.

Put simply, the House exercised its full authority in the absence of a quorum, and that authority was insufficient to compel the attendance of absent members. "Article III, section 10 is one of the foundational constitutional rules governing the law-making process in Texas." *In re Abbott*, 628 S.W.3d at 292. The Constitution "gives the present members of each chamber a remedy against the absent members when a quorum is lacking" and enabled them to "'compel the attendance of absent members' in order to achieve a quorum so that business may be done." *Id.* By leaving the State, Respondents nullified this foundational constitutional tool that is intended to "protec[t] against efforts by quorum-breakers to shut down legislative business" and "ensur[e] that the legislature can continue to do business despite efforts by a minority faction to shut it down by breaking quorum." *See id.* at 297. The State filed this petition only after the House proved unable to continue to do business and to compel Respondents' attendance.

In these circumstances, the State's petition reinforces the quorum-forcing authority of the House because Respondents failed to comply with the deadlines set by the Speaker and evaded arrest warrants signed by the Speaker. As the U.S. Supreme Court has explained, "[s]eparation-of-powers principles are vindicated, not disserved, by measured cooperation between the two political branches of the Government, each contributing to a lawful objective through its own processes." *Loving v. United States*, 517 U.S. 748, 773 (1996). The State seeks to vindicate the authority of the House to compel the attendance of absent members by asking this Court to hold that when Respondents refused to attend the Special Session and fled the State to deprive the House of quorum and evade the House's quorum-forcing powers, they abandoned their offices, which are now vacant.

Prayer

The Court should declare that Respondents have vacated their offices as State Representatives.

Respectfully submitted.

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