

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

BRIEF OF AMICI CURIAE
JOE MOODY & MARY E. GONZÁLEZ
in support of Respondent

Ellic Sahualla

State Bar Number 24057365

Counsel for Amici Curiae

P.O. Box 2910 Austin, TX 78768

p (512) 463-0728 *f* (512) 463-0397

e ellic.sahualla@house.texas.gov

IDENTITY OF PARTIES & COUNSEL

Relator & Counsel

GREG ABBOTT

represented by

Trevor W. Ezell

State Bar Number 24109849

P.O. Box 12428 Austin, TX 78711

p (512) 936-3306 *f* (512) 463-1932

e trevor.ezell@gov.texas.gov

Respondent & Counsel

GENE WU

represented by

Chad Dunn

State Bar Number 24036507

1900 Pearl St. Austin, TX 78705

p (281) 580-6310 *f* (281) 580-6362

e chad@brazilanddunn.com

Amici Curiae & Counsel

JOE MOODY

MARY E. GONZÁLEZ, PhD

represented by

Ellic Sahualla

State Bar Number 24057365

P.O. Box 2910 Austin, TX 78768

p (512) 463-0728 *f* (512) 463-0397

e ellic.sahualla@house.texas.gov

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IDENTITY & INTEREST OF AMICI CURIAE

This brief is tendered on behalf of Joe Moody and Dr. Mary E. González.

Moody is currently in his eighth term as a Democrat state representative for District 78 (El Paso) in the Texas House of Representatives. He serves as the House's speaker pro tempore, a position he has held under three different speakers. And (relevant to the bribery contentions here), Moody has worked as both a prosecutor and a criminal defense attorney, twice chaired the House Committee on Criminal Jurisprudence, twice served on the House Committee on General Investigating, and is co-chair of the Criminal Justice Reform Caucus.

Dr. González is currently in her seventh term as a Democrat state representative for District 75 (Clint) in the Texas House of Representatives. She serves as vice chair of the House Committee on Appropriations, a position she has held three times. She also served as chair of the Texas House LGBTQ Caucus for three terms and vice chair of the Mexican American Legislative Caucus for one term.

These roles provide the amici with unique interest in and insight into the outcome of this case.

Counsel who submitted this brief is an employee of amicus curiae Moody and received his ordinary salary during its preparation. No other fee was or will be paid for preparing the brief.

ISSUES PRESENTED

This brief presents three issues drawn from the substance and subsidiary issues fairly included in the original petition:

- 1 Has Representative Wu abandoned office by “nonuse”?
- 2 Has Representative Wu forfeited office by “misuse”?
- 3 Is this a question for the courts?

ARGUMENT

“What is at stake here? Nothing less than the future of Texas.” Relator’s Emergency Petition for Writ of Quo Warranto (“REP”) at 1. Governor Abbott’s opening lines are absolutely right.

So much else is wrong. That the petition spends nearly one-third of its argument justifying whether its request is even legal isn’t a strong start, as our Attorney General would agree based on his own amicus letter. But technical issues like jurisdiction and standing are best left to Respondent, Representative Gene Wu. This brief will focus on the bigger pieces and big picture.

This Court and the Texans watching it should make no mistake: None of this is new. In 1840, Abraham Lincoln famously jumped out of a window trying to stop a Democrat quorum in the Illinois House.¹ Quorum tactics have been used countless times by both parties since the founding of this country,² including in Texas, where the first legislative quorum break was in 1870.³ History puts the lie to the claim that this “is not a political dispute; it is a constitutional crisis.” REP at 24. It’s exactly a political dispute—one that’s old hat for Texas.

¹ Mitch Smith, *Abraham Lincoln’s Leap From a Window, and 4 Other Ways Lawmakers Have Fled Votes*, N.Y. TIMES (June 25, 2019), available at <https://www.nytimes.com/2019/06/25/us/oregon-walkouts.html>.

² See *id.* (describing history of quorum breaking in United States in context of 2019 Republican quorum break in Oregon).

³ Hayden Betts, *Denying quorum has been a Texas political strategy since 1870*, TEX. TRIBUNE (Aug. 3, 2025), available at <https://www.texastribune.org/2025/08/03/texas-quorum-breaks-history>.

What *would* be a constitutional crisis is this Court un-electing nearly every member of the minority party over lawfully resisting the majority. This legislative battle began because legislators wanted to pick their voters. This legal battle would cut voters out entirely and allow a partisan governor to pick his legislators.

That puts us on the brink of naked authoritarianism. This Court should take no part in hurtling us over that edge into the endless darkness below.

Representative Wu hasn't abandoned office by "nonuse"

He's serving his constituents exactly how many of them demand

Texas legislators have many duties besides voting on bills. Their oath states that they must "preserve, protect, and defend the Constitution and laws of the United States and of this State." TEX. CONST. art. XVI, § 1(a). The job description of a House member includes listening to and helping constituents in numerous ways, traveling within and outside of Texas, and meeting with officials from other states. It also means communicating with and on behalf of those you serve as well as using parliamentary tools to achieve political and policy goals.

In this case, many constituents who elected Representative Wu insist that his duties and oath include breaking quorum now. They've said so publicly in hearings before the House Select Committee on Congressional Redistricting, where Texans raged against the proposal nearly 100-to-1, calling it an attack on their fundamental constitutional rights.⁴

⁴ Amicus curiae Moody saw this firsthand serving on that committee, but video confirmation can be found at <https://house.texas.gov/videos/committees/89/1>, and the committee itself

He hasn't refused to serve

The Governor claims that Representative Wu has refused to serve because “Quorum provisions” make attendance “an affirmative constitutional obligation.” REP at 18. Yet the opposite is logically true—the existence of a threshold contemplates that it might not be met. *See also Spears v. Sheppard*, 150 S.W.3d 769, 770 (Tex. 1941) (holding legislators’ per diem not contingent on actual attendance of legislative session). As this Court has acknowledged, “[j]ust as article III, section 10 enables ‘quorum-breaking’ by a minority faction of the legislature, it likewise authorizes ‘quorum-forcing’ by the remaining members.” *In re Abbott*, 628 S.W.3d 288, 292 (Tex. 2021). That’s simply how the House works.

The petition here also argues that any “plans to continue serving as a representative” are irrelevant. REP at 19. But under the two cases it sparsely quotes on this issue, that mindset is *all* that’s relevant. *Honey* was decided based on whether the officeholder, “in his own mind, ever intended to abandon his office.” *Honey v. Graham*, 39 Tex. 1, 11 (1873). *Angelini* went even further by holding that even a voluntary resignation may not be enough for abandonment because an officeholder “controls the right to decide when he leaves” office. *Angelini v. Hardberger*, 932 S.W.2d 489, 492 (Tex. 1996). The requested writ was denied in both cases. *See generally Cramford v. State*, 153 S.W.3d 497, 503–05 (Tex. App.—Amarillo 2004, no pet.) (reviewing Texas caselaw on vacancy by resignation and constitutional holdover provision).

is in possession of numerous additional comments submitted through <https://comments.house.texas.gov/home>.

Far from “repeatedly fail[ing] to show up for work,” REP at 20, Wu is at work right now. His constituents have asked him to fulfill his oath to protect their rights by breaking quorum, and he has followed in the footsteps of many past legislators from both parties in doing so. It’s little different than walking up to the back microphone on the House floor and raising a point of order in hopes of defeating a bill without a vote. Simply put, Wu is still doing his job.

An adverse ruling here would have a ripple effect that would reshape what that means in our part-time legislature. Could members meet responsibilities that require travel, especially if it’s outside of Texas? Could they even have jobs? And most importantly, could they respond to their constituents promptly and effectively? These are functional questions they shouldn’t have to wrestle with, but they absolutely will if this Court removes Representative Wu.

He hasn’t moved his residence to another state

The related claim that Representative Wu has moved his residence to another state is quite frankly farcical. His one and only homestead is in his district. His wife and children await his return there. The statements that the Governor cites clearly speak to a future return (the trip is “one day at a time” to “deal with this special session,” REP at 8).

Once again, the petition cites unhelpful cases that make Wu’s point for him. *Compare Mill v. Barlett*, 377 S.W.2d 636, 637 (Tex. 1964) (move for law school “was for a temporary absence with a fixed intention to return”), *with Prince v. Inman*, 280 S.W.2d 779, 781–82 (Tex. App.—Beaumont 1955, no writ) (sale of

home, move of family, and new employment indicated change of residence). And in this case, these already favorable opinions should be viewed through the lens of the longstanding principle that “[a]ny constitutional or statutory provision which restricts the right to hold public office should be strictly construed against ineligibility.” *In re Carlisle*, 209 S.W.3d 93, 96 (Tex. 2006).

As before, discouraging legislative travel would make legislators less capable and less responsive. It’s also unnecessary here. A trip that has so far lasted a matter of days is being characterized as a change of residence because it sits against another timeline: The Governor believes that Representative Wu’s removal is “urgently needed” because the current session “must end on August 20, 2025.”⁵ REP at 10. But as the Governor knows better than anyone, he can simply call another special session—as many as he wishes, in fact. TEX. CONST. art. IV, § 8. This urgency is artificial and shouldn’t influence this Court’s decision-making or briefing schedule at all.

Representative Wu hasn’t forfeited office by “misuse”

The bribery accusation is absurd on its face

As unreasonable as it is to call a temporary trip away from home a change of residence, it’s even less reasonable to suggest that accepting donations to cover expenses for something an official is already doing is bribery. If that were true, have Texas officials been widely accepting bribes by soliciting donations

⁵ To clarify in candor to the Court, the current session actually ends on August 19, 2025.

and volunteers for flood relief?⁶ Plainly not, but those are the unintended consequences the Governor’s petition invites.

The petition makes passing reference to criminal liability, but the actions it complains about don’t come close to that. Our bribery statute explicitly says it doesn’t include any benefit “that is a political contribution . . . or expenditure” that’s properly reported. TEX. PEN. CODE § 36.02(d). “A ‘contribution’ is a direct or indirect transfer of money, goods, or services, or anything of value, and . . . is a political one if it can be characterized as a campaign or officeholder contribution.” *Cary v. State*, 507 S.W.3d 750, 758 (Tex. Crim. App. 2016). That’s the case here—Wu isn’t hoarding money in a personal piggybank.

The law also only applies to a taking or withholding of official action that “would not have been taken or withheld but for the benefit,” and for that, “direct evidence of [an] express agreement shall be required.” TEX. PEN. CODE § 36.02(a)(4). There’s no evidence of any quid pro quo because the decision to break quorum preceded any solicitation of funds. REP at 13. There’s also certainly no “express agreement” here, leaving us without even reasonable suspicion—our lowest standard in criminal law—that a crime was committed.

TEX. CONST. art. XVI, § 41’s bribery provisions include similar restrictions and offer the Governor no better path for making his case. With no quid pro quo, the facts don’t meet the Constitution’s requirement that something

⁶ Texas government websites are replete with these calls, such as at <https://www.tdhca.texas.gov/disaster-relief-resources-individuals-and-families>.

be given in exchange “for” withholding an action. To rule otherwise would invalidate virtually all political donations and encourage backroom dealing.

This situation isn’t anything like bribery in either a criminal or constitutional sense. Instead, it’s an example of exactly how politics should work. When politicians really fight for their constituents, the people support those efforts. What Representative Wu has done is literally the opposite of bribery: just honest, ground-up public service that people have been moved to support.

This isn’t a question for the courts

The voters have decided and will continue to decide who represents them

The elephant in the room (so to speak) is that not one case cited in the petition resulted in an officeholder’s removal. This court has recently observed as much, noting that although the law “authorize[s] direct actions seeking a writ of quo warranto . . . we appear to have entertained such requests on only a few occasions, always denying the writ when we have done so...” *Paxton v. Annunciation House*, No. 24-0573, 2025 WL 1536224, at *7 (Tex. Jan 13, 2025).

There’s good reason for that. What the Governor is asking is a political question and separation of powers nightmare. *Compare* TEX. CONST. art. II, § 1 (providing that no branch of government “shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted”), *with id.* art. III, § 8 (providing that legislature “shall be the judge of the qualifications . . . of its own members”); *cf. Powell v. McCormack*, 395 U.S. 486,

548 (1969) (finding, in federal provisions mirrored in Texas, that expulsion, but not exclusion, of members of Congress was congressional function).

That’s why this Court has always chosen “judicial restraint . . . to maintain the delicate balance of powers among the branches,” especially when “the dispute has become one between the members of one branch rather than one between the branches,” *In re Turner*, 627 S.W.3d 654, 661 (Tex. 2021), which is precisely what a quorum battle is. That restraint is needed now more than ever.

The Governor is essentially asking this Court to “fire” Representative Wu. Respectfully, though, neither the Governor nor this Court are his boss—the voters of his district are. If voters dislike what he’s done, they’ll fire him on Election Day. If not, he should continue to serve, even if it’s by ruffling feathers across the aisle. That’s not a “hijacking of Texas government,” REP at 3; that’s just democracy working as intended.

Amici have served in the Texas Legislature for a long time—like Representative Wu, probably too long for some people’s liking. In that time, the House floor has been a place of both passionate debate and heartfelt friendship, a place of rules lawyering that frustrates some and empowers others, a place of triumph and defeat and hope.

But it’s also gotten meaner. Members once bragged about disagreeing without being disagreeable, and while there was sometimes respectability politics, more often there was simply respect. That feels like a long time ago.

As quorum-breaker Abraham Lincoln once said,

At what point then is the approach of danger to be expected? I answer, if it ever reach us, it must spring up amongst us. It cannot come from abroad. If destruction be our lot, we must ourselves be its author and finisher. As a nation of freemen, we must live through all time, or die by suicide.⁷

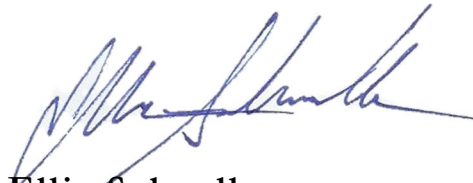
That's the path we're on now. So much in our politics seems to be about power for its own sake, whatever the cost. That cost may finally be too high today. This Court should refuse to pay it.

⁷ Then-Illinois State Representative Abraham Lincoln, *The Perpetuation of Our Political Institutions: Address Before the Young Men's Lyceum of Springfield, Illinois* (Jan. 27, 1838), available at <https://www.abrahamlincolnonline.org/lincoln/speeches/lyceum.htm>.

CONCLUSION

Amici urge this Court to deny all relief requested by the Governor because there are insufficient grounds, insufficient evidence, and insufficient reasons to jeopardize our democratic institutions.

Respectfully,



Ellic Sahualla

State Bar Number 24057365

Counsel for Amici Curiae

P.O. Box 2910

Austin, TX 78768

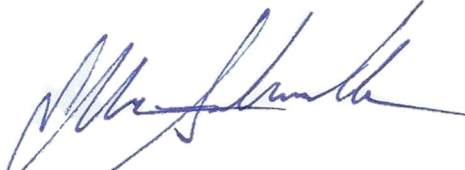
p (512) 463-0728

f (512) 463-0397

e ellic.sahualla@house.texas.gov

CERTIFICATE OF COMPLIANCE

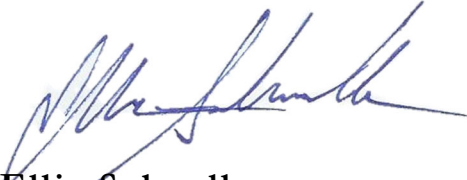
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Ellic Sahualla

CERTIFICATE OF SERVICE

I certify that on August 8, 2025, a true and correct copy of this document was served on counsel for Greg Abbott (Trevor Ezell, trevor.ezell@gov.texas.gov) and Gene Wu (Chad Dunn, chad@brazilanddunn.com) through the electronic filing manager.



Ellic Sahualla

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Scott Brazil		scott@brazilanddunn.com	8/8/2025 3:10:30 PM	SENT
Maria Williamson		maria.williamson@oag.texas.gov	8/8/2025 3:10:30 PM	SENT
Chad Dunn		chad@brazilanddunn.com	8/8/2025 3:10:30 PM	SENT
William F Cole		William.Cole@oag.texas.gov	8/8/2025 3:10:30 PM	SENT
William Peterson		william.peterson@oag.texas.gov	8/8/2025 3:10:30 PM	SENT
Trevor Ezell		trevor.ezell@gov.texas.gov	8/8/2025 3:10:30 PM	SENT
Amy Ruzicka		amy.ruzicka@gov.texas.gov	8/8/2025 3:10:30 PM	SENT
Gene Wu		gene.wu@house.texas.gov	8/8/2025 3:10:30 PM	SENT
Amy Warr		awarr@adjtlaw.com	8/8/2025 3:10:30 PM	SENT
Mimi Marziani		mmarziani@msgpllc.com	8/8/2025 3:10:30 PM	SENT
Joaquin Gonzalez		gonzalez@msgpllc.com	8/8/2025 3:10:30 PM	ERROR
Beth Stevens		bstevens@msgpllc.com	8/8/2025 3:10:30 PM	SENT