No. 21-0538

In the Supreme Court of Texas

IN RE CHRIS TURNER, IN HIS CAPACITY AS A MEMBER OF THE TEXAS HOUSE OF REPRESENTATIVES AND HIS CAPACITY AS CHAIR OF THE HOUSE DEMOCRATIC CAUCUS, ET AL.,

Relators.

On Petition for Writ of Mandamus to the Executive Clerk of the Governor, the Deputy Secretary of State, and the Comptroller of Public Accounts of the State of Texas

RESPONSE TO PETITION FOR WRIT OF MANDAMUS

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Identity of Parties and Counsel

Respondents provide the following supplement to Relators' identification of the parties and counsel.

Respondents:
Gregory S. Davidson, in his official capacity as Executive Clerk to the Governor
Jose A. Esparza, in his official capacity as Deputy Secretary of State[1]
Glenn Hegar, in his official capacity as Comptroller of Public Accounts of the State of Texas

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[1] The position of Secretary of State is currently vacant, and there is no "Acting Secretary of State" under Texas law. Instead, the Deputy Secretary of State "shall perform the duties prescribed by law for the secretary of state when the secretary of state is absent or unable to act." Tex. Gov't Code § 405.004(a)(1).

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"Pet. App." refers to Relators' appendix. "Resp. App." refers to the appendix to this response.

Statement of the Case

Nature of the Case:	This is an original proceeding brought by State Representative Chris Turner, various Democratic members of the Texas House of Representatives and their aligned legislative caucuses, legislative employees, and a labor federation representing legislative employees. Relators' Petition for Writ of Mandamus ("Pet.") i-iii. They seek a writ of mandamus to require three state officials to ignore Governor Abbott's line-item veto of Article X of the General Appropriations Act. *Id.* at 37. Relators contend that the Governor's veto violates Articles II, III, and IV of the Texas Constitution and is therefore void. *Id.* at 16.
Respondents:	Gregory S. Davidson, in his official capacity as Executive Clerk to the Governor; Jose A. Esparza, in his official capacity as Deputy Secretary of State; and Glenn Hegar, in his official capacity as Comptroller of Public Accounts of the State of Texas
Respondents' Challenged Actions:	Relators do not describe what actions Respondents have taken or will take in response to the Governor's veto. Rather, they ask that the Court order Respondents to "give Article X full effect" and to "perform their duties consistent with that provision." *Id.* at 37.

Statement of Jurisdiction

Generally, this Court has jurisdiction to issue a writ of mandamus to any officer of the executive departments of the State to compel him or her to perform a state-law duty. Tex. Gov't Code § 22.002(c). But Respondent Gregory Davidson, the Governor's executive clerk, does not qualify as an executive officer against whom

mandamus may issue. *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 776 (Tex. 1999); *see infra* pp. 4-5. And a writ of mandamus issued against the Deputy Secretary of State would serve no purpose because he has no power to dispense funding to the Legislature. *See* Tex. Gov't Code §§ 405.011-.023 (listing Secretary's duties); *infra* pp. 5-6.

Moreover, this Court has jurisdiction only to the extent Relators have presented a live dispute and established their standing to sue. *Patterson v. Planned Parenthood of Hous.*, 971 S.W.2d 439, 442 (Tex. 1998) (explaining that ripeness and standing are threshold issues that implicate subject matter jurisdiction). They have done neither. *See infra* pp. 6-8, 8-12.

Issues Presented

1. Whether the Court lacks jurisdiction over the Governor's Clerk and the Deputy Secretary of State because (a) the Clerk is not an executive officer of state government and (b) a writ of mandamus issued against the Deputy Secretary would have no effect.
2. Whether the Relators' claims are nonjusticiable because (a) the claims are not ripe, (b) Relators lack constitutional standing, and (c) the political question doctrine bars Relators' claims.
3. Whether Relators have failed to establish entitlement to mandamus relief against Respondents on any of their constitutional claims arising from the Governor's exercise of his veto power.

To the Honorable Supreme Court of Texas:

After the Legislature's eleventh-hour abdication of its duty to govern, Governor Abbott disapproved of appropriations for the legislative branch made during the regular session. This inter-branch dispute is a paradigmatic example of checks and balances in action: having brought to bear his constitutional veto authority, Governor Abbott will convene a special legislative session that begins on July 8, just three days from now, so that legislators can do the work that Texans pay them to do. During that session, the Legislature may pass, and the Governor may sign, a supplemental budget that ensures uninterrupted funding for the legislative branch for the next biennium. But whatever the result, the courts have no role to play in such a textbook political-branch dispute.

Nonetheless, like many who find their preferred policy outcomes frustrated by the political process, Relators insist that this political dispute requires immediate judicial intervention. It does not. And if this Court entertains Relators' claims, it should conclude that they are meritless. The Governor properly exercised the veto power bestowed upon him by the Texas Constitution and acted consistently with this Court's precedent. Under the Texas Constitution, the Governor has the exclusive power to disapprove any bill, and that power may not be circumscribed in the amorphous manner that Relators propose here.

Accepting Relators' position would effectively eliminate the Executive Branch's independent constitutional veto power, impermissibly transferring a core Executive responsibility to this Court, which would sit in judgment of the Governor's motives behind each veto. The separation of powers does not tolerate such a

transfer. And in any event, Relators have not shown that the three Respondents have acted unconstitutionally in any respect.

The petition for a writ of mandamus should be dismissed for lack of jurisdiction or denied.

Statement of Facts

I. The Governor Vetoed Line Items in the General Appropriations Act After the Legislature Abdicated Its Governing Duties.

During the 87th legislative session, the House failed to vote on a number of bills for want of a quorum after Democrats staged a walkout on May 30, the day before the end of the session. At the time of the walkout, the Governor had not yet acted on the General Appropriations Act, which appropriates funding for the Texas government for the biennium starting on September 1, 2021. Pet. App. A. On June 18, Governor Abbott objected to and disapproved of items of appropriation in Article X of that Act, which funds the House, the Senate, and six legislative agencies. Pet. App. B. The Governor explained: "Texans don't run from a legislative fight, and they don't walk away from unfinished business. Funding should not be provided to those who quit their jobs early, leaving their state with unfinished business and exposing taxpayers to higher costs for an additional legislative session." *Id.*

II. The Governor Will Call a Special Session.

The Governor has the exclusive right to call a special session and announce the subjects up for consideration. Tex. Const. art. III, § 40; *id.* art. IV, § 8(a). The Governor has indicated that he will call a special session to begin on July 8, 2021, and will

set the agenda in the coming days. Resp. App. 2. He has not ruled out including Article X funding on the agenda.

III. Relators Seek Mandamus Relief.

On June 25, Relators filed this mandamus action against the Executive Clerk of the Governor, the Deputy Secretary of State, and the Comptroller. Pet. x. Relators are Democratic Members of the House of Representatives, their aligned legislative caucuses, legislative employees, and a labor federation representing legislative employees. *Id.* at i-iii. They contend that the Governor's veto violates Articles II, III, and IV of the Texas Constitution and seek mandamus relief ordering Respondents to give "full effect" to Article X of the General Appropriations Act. *Id.* at 16, 37. They acknowledge that the Legislature will soon convene in a special session but nonetheless urge the Court to resolve their mandamus petition, and to do so "well in advance of" September 1, 2021. *Id.* at 16, 37.

Summary of the Argument

Relators' claims are jurisdictionally barred. The Court lacks jurisdiction for two reasons. *First*, the Court lacks original jurisdiction over the Clerk of the Governor and the Deputy Secretary of State. The Clerk is not an executive officer of the State, and the Secretary does not enforce Article X of the General Appropriations Act. *Second*, Relators' claims are not justiciable. Whether Relators have a claim at all will depend on how the upcoming special session unfolds—and that session will begin imminently. Relators also lack standing because their injuries (if any) are not fairly

traceable to the actions of any Respondent. Rather, Relators complain about Governor Abbott, who is not, and could not be, a respondent here. Finally, Relators' complaints about Governor Abbott's actions—taken in his capacity as the State's Chief Executive against the Legislature as a political entity—raise political questions that are not subject to any manageable judicial standards and therefore cannot be addressed in this Court.

Relators' claims are also meritless. No one, including Relators, disputes that the Governor has broad veto power and that the Governor could veto every bill passed by the Legislature. The Governor's disapproval of Article X falls well within the Governor's constitutional authority, so no action by Respondents consistent with that disapproval would be unconstitutional. A contrary conclusion by this Court would contravene the very separation-of-powers principles that Relators purport to champion.

ARGUMENT

I. The Court Lacks Jurisdiction Over the Governor's Clerk and the Deputy Secretary of State.

A. The Clerk of the Governor is not an executive officer.

This Court may issue a writ of mandamus against "any officer of state government except the governor." Tex. Gov't Code § 22.002(a). "Among the heads of state departments and agencies, the constitution identifies seven officials as executive officers. These are the governor, the lieutenant governor, the secretary of state,

the comptroller of public accounts, the treasurer,[2] the commissioner of the general land office, and the attorney general." *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 672 (Tex. 1995); *see Nolo*, 991 S.W.2d at 776. And the Court has indeed exercised its original jurisdiction in mandamus proceedings "in which . . . executive officer[s] ha[ve] allegedly failed to perform [their] legal duties." *A & T Consultants*, 904 S.W.2d at 672. Those cases have involved the Comptroller, the Attorney General, the Secretary of State, and the former Treasurer. *See id.* at 672-73 (collecting cases).

The Governor's Clerk is not on the list. Section 22.002(a) refers "only to chief administrative officers—the heads of State departments and agencies who are charged with the general administration of State affairs." *Nolo*, 991 S.W.2d at 776. The Executive Clerk works in the Office of the Governor, and the only officer of state government in that office is the Governor himself. *See id.* The Executive Clerk is therefore not a proper party to Relators' mandamus action.

B. The Deputy Secretary of State is not the *correct* executive officer.

The Deputy Secretary of State is also not a proper party because this Court may issue a writ of mandamus against a state officer only to compel an act "that, by state law, the officer or officers *are authorized to perform.*" Tex. Gov't Code § 22.002(c) (emphasis added). Relators ask the Court to "order[] Respondents to give Article X full effect and to perform their duties consistent with that provision." Pet. 37. But

[2] Texas has since abolished the office of State Treasurer. *See* Associated Press, *Texas Says Goodbye to Treasury*, N.Y. TIMES (Aug. 31, 1996), https://tinyurl.com/87vy4n8t.

the Secretary of State has no power to give this act of the Legislature "full effect," or to ensure that Article X bodies are funded. *See* Tex. Gov't Code §§ 405.011-.023 (listing Secretary's duties). The Secretary is not authorized to appropriate money to the Legislature. Relators cite no statute or authority empowering him to do anything relevant to this petition—and there is none.

Of course, after each legislative session, "the secretary of state shall publish and maintain electronically the bills enacted at that session." *Id.* § 405.014(b). But that is the extent of the Deputy Secretary's involvement: the Secretary publishes new laws, but does not enforce them or otherwise give them "full effect," let alone appropriate money to pay the Legislature. Thus, any writ of mandamus issued to him in this matter would not order him to take an action he is "authorized to perform." *Id.* § 22.002(c). The Court therefore also lacks jurisdiction to issue a writ of mandamus against him here.

II. Relators' Claims Are Not Justiciable.

The Court cannot grant relief to Relators because they fail to present a justiciable controversy. Their claims are not ripe; even if they were, Relators cannot show standing to press them; and even if they could, the questions presented here are inherently political and not judicial in nature.

A. Relators' claims are unripe.

This suit is not justiciable because it comes too early for the Court to grant Relators any relief. Rooted in the "prohibition on advisory opinions," the ripeness doc-

trine asks "whether the facts have developed sufficiently so that an injury has occurred or is likely to occur, rather than being contingent or remote." *Planned Parenthood*, 971 S.W.2d at 442. Texas courts do not engage "in abstract disagreements over administrative policies" that may never result in concrete harm. *Id.* As a result, they will not resolve disputes that involve "uncertain or contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id.* (cleaned up).

Relators' harms may never materialize. Relators' primary allegation is that the Legislature and the agencies funded by Article X will not be able to function on September 1 without funding. *See, e.g.*, Pet. 23-24. But those alleged harms are speculative. They depend on the outcome of a special session that will conclude well in advance of September 1. *See* Tex. Const. art. III, § 40 (limiting special sessions to 30 days). Indeed, Relators' own news sources acknowledge the uncertainty arising from the upcoming special session. *See* Pet. App. T.

The existence of such a session alone creates sufficient uncertainty to render Relators' claims unripe. But numerous additional factors further complicate Relators' premature request for judicial intervention: the list of subjects up for consideration at the special session remains unspecified, and the timing of the session leaves ample time for the Legislature to consider, and the Governor to approve, a supplemental budget addressing Article X funding. Relators' claims depend on each of these contingencies being resolved in a specific, adverse way—and such contingencies "may not occur as anticipated." *Planned Parenthood*, 971 S.W.2d at 442. Under these circumstances, a judicial determination on the merits of Relators' claims would

be premature, pragmatically unsound, and constitutionally improper. *See Ohio Forestry Ass'n v. Sierra Club*, 523 U.S. 726, 735 (1998) (holding that a challenge to an agency plan was not ripe because "the possibility [of] further consideration" was "not theoretical, but real"); *La. Envtl. Action Network v. Browner*, 87 F.3d 1379, 1382 (D.C. Cir. 1996) ("Prudence . . . restrains courts from hastily intervening into matters that may best be reviewed at another time or in another setting.").

B. Relators lack standing.

For closely related reasons, Relators lack standing, which requires "a concrete injury to the plaintiff and a real controversy between the parties that will be resolved by the court." *Heckman v. Williamson County*, 369 S.W.3d 137, 154 (Tex. 2012). To meet those requirements, the party invoking the court's jurisdiction must show (1) an "injury in fact" that is both "concrete and particularized" and "actual or imminent"; (2) that the injury is fairly traceable to the defendant's challenged actions; and (3) that it is "'likely,' as opposed to merely 'speculative,' that the injury will be 'redressed by a favorable decision.'" *Id.* at 154-55 (cleaned up). Where the suit "seek[s] to correct an alleged violation of the separation of powers, [the Court's] standing inquiry must be 'especially rigorous.'" *In re Abbott*, 601 S.W.3d 802, 809 (Tex. 2020) (orig. proceeding) (quoting *Raines v. Byrd*, 521 U.S. 811, 819 (1997)).

1. Relators have no "actual or imminent" injury.

Relators' injury must be "actual or imminent, not conjectural or hypothetical." *Heckman*, 369 S.W.3d at 154. Relators' claimed injuries are far from it: they will occur, if at all, only after a series of unpredictable events in the upcoming months.

As already noted, Relators' injury will not accrue—if it ever accrues—until closer to September 1, when legislative funding might lapse in part absent additional legislative action. An injury that accrues only pending the outcome of a legislative session is necessarily "conjectural or hypothetical." *Id.* To hold otherwise would permit litigation over almost *any* bill while it remains pending—indeed, over any source of funding with a defined future end date. If an "actual or imminent" injury exists because funding for a branch of government is open to debate at the beginning of a special session, then an actual or imminent injury exists at the beginning of every legislative session when the Legislature debates the amount of money each state agency will receive in the next biennium. Relators point to no authority adopting such an expansive view of the standing doctrine.

This problem is particularly acute with respect to Relators' claim (at 26) that the Governor unconstitutionally vetoed rollover funds. Article X contains appropriations for the Senate, the House of Representatives, the Legislative Budget Board, the Legislative Council, the Commission on Uniform State Laws, the Sunset Advisory Commission, the State Auditor's Office, and the Legislative Reference Library. Pet. App. B. But Relators do not allege that any of those eight bodies will have rollover funds in September, which bodies will have them, and in what amounts. They have not met their burden to establish standing and ripeness as to this claim. *See Heckman*, 369 S.W.3d at 152-53. And indeed, the Constitution extinguishes such appropriations after two years. Tex. Const. art. VIII, § 6.

To be certain, Relators do not just allege a harm from the lack of funding itself. They also contend that the Governor's mere threat to withhold funding constitutes

a cognizable injury to the Legislature. Pet. 31. But Relators have no standing as individual legislators to claim an institutional injury on behalf of the entire legislative body. *See Va. House of Delegates v. Bethune-Hill*, 139 S. Ct. 1945, 1953 (2019) (noting that "individual members lack standing to assert the institutional interests of a legislature"). And even if they could do so, Relators fail to explain how the Governor's invocation of his veto authority constitutes an actionable harm. The give-and-take between the Executive and Legislative Branches is an indispensable part of Texas politics—indeed, of politics in any system of separated powers. Throughout Texas history, Governors have used the line-item veto to object to funding they disapprove of, *see, e.g.*, Tex. Att'y Gen. Op. No. KP-0048, 2015 WL 9434996, at *1 (2015) (addressing the Governor's line-item vetoes of a prior General Appropriations Act), and threatened to veto legislation when the circumstances have called for it, *see, e.g.*, *Ex parte Perry*, 483 S.W.3d 884, 915 (Tex. Crim. App. 2016) (listing "a threat by the governor to veto a bill unless it is amended" as an example of "the normal functioning of government").

The Governor is entitled to exercise his constitutional authority to veto bills. That power exists by virtue of the Texas Constitution itself. Tex. Const. art. IV, § 14. Relators cannot claim an injury-in-fact arising solely from a Governor's demonstrated willingness to use his veto powers in a way they find politically disadvantageous.

2. Relators' alleged injuries are not fairly traceable to Respondents.

The standing doctrine also requires that an injury be "fairly traceable" to Respondents' conduct. *Heckman*, 369 S.W.3d at 155. A court may act only "to redress

injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court." *Id.*

Relators cannot circumvent the constitutional and statutory command that this Court may not issue a writ of mandamus against the Governor, Tex. Const. art. V, § 3(a); Tex. Gov't Code § 22.002(a), by naming other state officials who did not cause the alleged harms that animate this action. Relators make it abundantly clear that, in their view, Governor Abbott is the sole party who purportedly caused them harm. *See, e.g.*, Pet. xii ("Absent swift judicial intervention, Governor Abbott's veto will unconstitutionally deprive his co-equal branch of its operating budget in less than three months."), 17 (alleging that Relators are "directly harmed by Governor Abbott's actions" and asking "that this Court declare Governor Abbott's veto unconstitutional"), 23 ("Governor Abbott's unconstitutional action harms thousands of public servants, including relators."). Indeed, not once do Relators allege how the three named Respondents have injured them.

The cases Relators cite are not to the contrary. In both *Jessen* and *Fulmore*, the relators brought mandamus actions against the Comptroller because he refused to pay them. *Jessen Assocs., Inc. v. Bullock*, 531 S.W.2d 593, 597 (Tex. 1975) (orig. proceeding); *Fulmore v. Lane*, 140 S.W. 405, 406 (Tex. 1911) (orig. proceeding). For example, in *Jessen*, then-Comptroller Bob Bullock refused to pay a voucher issued by the University of Texas Board of Regents because he believed that the Governor had vetoed the relevant provision in the General Appropriations Act. *Jessen*, 531 S.W.2d

at 597; *see also Fulmore*, 140 S.W. at 406 (Comptroller allegedly refused to pay stenographic clerk because he believed the Governor had vetoed the appropriation).

But here, Relators have made no allegation that the Comptroller has refused to pay them anything. And even if he refused to do so today, it would not matter because the General Appropriations Act will not take effect until September 1. Because Relators do not allege that the Comptroller has refused payment, he has not caused their alleged injuries. Similarly, even if the Governor's Clerk and the Deputy Secretary of State were proper parties, which they are not, Relators make no allegation that they have refused to perform any duty related to the Governor's veto. Accordingly, Relators have not met the traceability requirement as to any Respondent.

C. The political question doctrine bars review of the Governor's veto.

Relators also have not shown that their claims are subject to judicial—as opposed to political—resolution. This Court has applied the United States Supreme Court's political question jurisprudence in identifying issues beyond Texas courts' power to adjudicate. Specifically, this Court has examined whether there is "a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it." *Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 252-53 (Tex. 2018) (quoting *Baker v. Carr*, 369 U.S. 186, 217 (1962)).

There is no dispute that the Governor has the constitutional authority to veto line items in the budget; Relators just complain that this particular veto impinges upon their own political power as minority members of the Legislature. Pet. 35. But they offer no limiting principle or judicially manageable standards for their theory of

liability. Taken to its natural conclusion, Relators' theory could subject to litigation the veto of a state agency's budget; the veto of any portion of the budget; the veto of an *expansion* of the legislative budget; even the wholesale veto of an appropriations bill. Relators offer no suggestion as to why any of these actions may not be subject to judicial review—and if all are fit for judicial resolution, then the Executive's independent veto power will have been eliminated and the courts, rather than the Executive or Legislature, will ultimately wield the appropriations power. That cannot be correct.

Plaintiffs' boundless theory stands in sharp contrast to the cases that Relators cite (at 25), which involve very specific aspects of the Governor's veto power that can be evaluated under judicially manageable standards. For example, in *Minor v. McDonald*, "the only question" before the Court was whether "the Sundays which occurred between the 11th day of March and the 1st day of April, 1911 [should] be excluded in the 20 days allowed to the Governor to file his veto, after the adjournment of the Legislature[.]" 140 S.W. 401, 402-03 (Tex. 1911) (orig. proceeding). In *Fulmore*, the Court considered whether, "if a bill contains several items of appropriation, [the Governor] is authorized to object to one or more of such items." 140 S.W. at 412 (opinion of Dibrell, J.). The Court concluded that "[n]owhere in the Constitution is the authority given the Governor to approve in part and disapprove in part a bill." *Id.* And in *Jessen*, the Court was subsequently asked to construe the term "item of appropriation" in the Governor's veto power. 531 S.W.2d at 598-600. In

none of these cases did this Court set a standard regarding when a veto is substantively appropriate. *Cf. Rucho v. Common Cause*, 139 S. Ct. 2484, 2498 (2019). Yet that is what Relators ask this Court to do now.

Relators' complaint that a "Legislature that can earn the right to exist only after fully executing the Governor's agenda is not a co-equal branch," Pet. 31 n.14, only underscores the non-justiciability of their claims. *See, e.g.*, *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 624 (Minn. 2017) (declining to resolve a dispute between the Minnesota legislature and the governor over the governor's veto of appropriations for the legislature "when those branches have both an obligation and an opportunity to resolve those disputes between themselves"). Relators ignore that the Legislature is not helpless in the face of a stand-off with the Governor because it has wide-ranging powers and responsibilities, including the exclusive right to pass legislation. *See, e.g.*, Tex. Const. art. III, § 1. In complaining about the Governor's use of his veto power, Relators ask the Court to police how the political branches interact with one another. Courts do not and should not step into that fray.

III. The Governor's Veto Did Not Violate the Texas Constitution.

If the Court reaches the merits, it should find that Respondents could not have acted unconstitutionally because the Governor himself acted within the wide latitude afforded him by Article IV, section 14 of the Texas Constitution. That provision bestows broad authority for the Governor to veto legislative funding as an express check on the power of the Legislature: if a bill "presented to the Governor contains several items of appropriation, he may object to one or more of such items, and ap-

prove the other portion of the bill." Tex. Const. art. IV, § 14. As the Court of Criminal Appeals has correctly concluded, "[t]he Constitution does not purport to impose any restriction on the veto power based on the reason for the veto, and it does not purport to allow any other substantive limitations to be placed on the use of a veto." *Perry*, 483 S.W.3d at 900. This Court should not create such a limitation based on any of the three theories identified in the petition.

A. The Governor does not offend the separation of powers by checking the Legislature's power.

This mandamus action seeks to cabin the Governor's authority to veto line items in the General Appropriations Act. But a "governor's power to exercise a veto may not be circumscribed by the Legislature [or] by the courts." *Id.* at 901. And just as important, courts should not "examine the motives behind a veto or second-guess the validity of a veto." *Id.*; *see also Barnes v. Sec'y of Admin.*, 586 N.E.2d 958, 961 (Mass. 1992) ("We have never inquired into a Governor's motives in the use of the line item veto power."). For that reason, the Court should not, and cannot, attempt to discern the Governor's motives behind the veto of Article X. Instead, the only relevant question is whether he exercised his veto power consistent with the requirements of Article IV.

All of this shows that there is no separation-of-powers violation here. The Legislature can continue to fulfill its duties if the veto takes effect. If anything, Relators' separation-of-powers claim just raises other problems. For example, it would have this Court standing in the stead of the Legislative and Executive Branches to require that funding be allocated to particular agencies in particular amounts. But this Court

is endowed with judicial authority; it does not have the power to pass legislation or dispense funding to state agencies. *See* Tex. Const. art. II, § 1.

Finally, as Relators recognize, the "veto power, when exercised, is a legislative and not an executive function." Pet. 32 (quoting *Fulmore*, 140 S.W. at 411). The Governor's veto was thus a legislative act. The Court would itself violate the Texas Constitution's separation of powers by directing executive officials to thwart legislative action directed at the Legislature.

B. The Constitution appropriates legislators' salaries directly, so the Governor's veto cannot violate the Legislative Salaries Clause.

Relators' more specific claim (at 26) that the Governor's veto violates the Legislative Salaries Clause fails because the Governor cannot prevent members of the Legislature from being paid $600 per month when they are in session. The Legislative Salaries Clause is a self-executing appropriation of funds. *See* Tex. Const. art. III, § 24 ("Members of the Legislature shall receive from the Public Treasury a salary of Six Hundred Dollars ($600) per month . . . ."). Those funds must be dispensed regardless of the Governor's veto, because they exist outside it, and indeed, outside the General Appropriations Act. The Governor did not, and could not, affect the portion of legislators' pay that is guaranteed by the Texas Constitution.[3] *See Lightfoot v. Lane*, 140 S.W. 89, 90 (Tex. 1911) (orig. proceeding) (holding that a gubernatorial veto did not affect a constitutional salary provision); *cf.* Tex. Att'y Gen. Op. No. JH-0747 (1975) (discussing another constitutional appropriation of funds).

[3] Governor Abbott has acknowledged as much in his statement responding to this petition. *See* Resp. App. 3.

C. Relators offer no record evidence regarding "rollover funds."

Finally, as discussed above (at 9-10), Relators' claim that the veto "is unconstitutional to the extent it vetoes rollover funds" (Pet. 26-27) fails for lack of factual support. This Court requires a mandamus petition to be supported by record evidence. Tex. R. App. P. 52.7(a). Here, Relators have not even said *whether* the veto applies to rollover funds, let alone provided adequate record evidence to support their claim for extraordinary relief.

Prayer

The Court should dismiss or deny the petition for writ of mandamus.

Respectfully submitted.

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Certificate of Service

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Certificate of Compliance

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IN RE CHRIS TURNER, IN HIS CAPACITY AS A MEMBER OF THE TEXAS HOUSE OF REPRESENTATIVES AND HIS CAPACITY AS CHAIR OF THE HOUSE DEMOCRATIC CAUCUS, ET AL.,

Relators.

On Petition for Writ of Mandamus to the Executive Clerk of the Governor, the Deputy Secretary of State, and the Comptroller of Public Accounts of the State of Texas

APPENDIX

Tab 1:
Tex. Gov't Code § 22.002

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 2. Judicial Branch (Refs & Annos)
Subtitle A. Courts
Chapter 22. Appellate Courts
Subchapter A. Supreme Court

V.T.C.A., Government Code § 22.002

§ 22.002. Writ Power

Currentness

(a) The supreme court or a justice of the supreme court may issue writs of procedendo and certiorari and all writs of quo warranto and mandamus agreeable to the principles of law regulating those writs, against a statutory county court judge, a statutory probate court judge, a district judge, a court of appeals or a justice of a court of appeals, or any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals.

(b) The supreme court or, in vacation, a justice of the supreme court may issue a writ of mandamus to compel a statutory county court judge, a statutory probate court judge, or a district judge to proceed to trial and judgment in a case.

(c) Only the supreme court has the authority to issue a writ of mandamus or injunction, or any other mandatory or compulsory writ or process, against any of the officers of the executive departments of the government of this state to order or compel the performance of a judicial, ministerial, or discretionary act or duty that, by state law, the officer or officers are authorized to perform.

(d) Repealed by Acts 1987, 70th Leg., ch. 148, § 2.03.

(e) The supreme court or a justice of the supreme court, either in termtime or vacation, may issue a writ of habeas corpus when a person is restrained in his liberty by virtue of an order, process, or commitment issued by a court or judge on account of the violation of an order, judgment, or decree previously made, rendered, or entered by the court or judge in a civil case. Pending the hearing of an application for a writ of habeas corpus, the supreme court or a justice of the supreme court may admit to bail a person to whom the writ of habeas corpus may be so granted.

Credits

Acts 1985, 69th Leg., ch. 480, § 1, eff. Sept. 1, 1985. Amended by Acts 1987, 70th Leg., ch. 148, § 2.03, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 355, § 1, eff. Sept. 1, 1995; Acts 2011, 82nd Leg., 1st C.S., ch. 3 (H.B. 79), § 2.01, eff. Jan. 1, 2012.

V. T. C. A., Government Code § 22.002, TX GOVT § 22.002
Current through legislation effective June 4, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

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Tab 2:
Office of the Governor, *Governor Greg Abbott Announces Special Session Date* (June 22, 2021)

Governor Greg Abbott Announces Special Session Date

June 22, 2021 | Austin, Texas | Press Release | Legislative

Governor Greg Abbott today announced that he will convene a special legislative session on July 8, 2021. Agenda items will be announced prior to the convening of the special session.

Tab 3:
Office of the Governor, *Office of the Governor Issues Statement on Democrats' Lawsuit to Overturn Article X Veto* (June 25, 2021)

Office Of The Governor Issues Statement On Democrats' Lawsuit To Overturn Article X Veto

June 25, 2021 | Austin, Texas | Press Release

Office of the Governor Press Secretary Renae Eze today issued a statement regarding a lawsuit filed by Texas Democrat state representatives and others to halt the execution of the Governor's veto of Article X:

"The governor's veto power is granted by the Texas Constitution, and the Texas Supreme Court has recognized that 'the Governor has power to disapprove any bill.' Also, the Texas Court of Criminal Appeals has made clear that the Constitution does not 'impose any restriction on the [governor's] veto power.' More to the point, that court also ruled that 'the governor's power to exercise a veto may not be circumscribed by the Legislature [or] by the courts.' This is not the first time, and undoubtedly will not be the last time, that a governor vetoes funding for government positions and salaries. Any limitation on that authority directly contradicts the Constitution and decades of vetoes by governors.

"The Democrats' claims about the governor's veto 'cancelling' the legislative branch are misleading and misguided. The Constitution protects the legislative branch, and as the Democrats well know, their positions, their powers and their salaries are protected by the Constitution. They can continue to legislate despite the veto."

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Associated Case Party: House Democratic Caucus

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Associated Case Party: Texas AFL-CIO

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