

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; TEXAS AFL-CIO; HOUSE DEMOCRATIC CAUCUS; MEXICAN AMERICAN LEGISLATIVE CAUCUS; TEXAS LEGISLATIVE BLACK CAUCUS; LEGISLATIVE STUDY GROUP; THE FOLLOWING IN THEIR CAPACITIES AS MEMBERS OF THE TEXAS HOUSE OF REPRESENTATIVES: ALMA ALLEN, RAFAEL ANCHÍA, MICHELLE BECKLEY, DIEGO BERNAL, RHETTA BOWERS, JOHN BUCY, ELIZABETH CAMPOS, TERRY CANALES, SHERYL COLE, GARNET COLEMAN, NICOLE COLLIER, PHILIP CORTEZ, JASMINE CROCKETT, YVONNE DAVIS, JOE DESHOTEL, ALEX DOMINGUEZ, HAROLD DUTTON, JR., ART FIERRO, BARBARA GERVIN-HAWKINS, JESSICA GONZÁLEZ, MARY GONZÁLEZ, VIKKI GOODWIN, BOBBY GUERRA, RYAN GUILLEN, ANA HERNANDEZ, GINA HINOJOSA, DONNA HOWARD, CELIA ISRAEL, ANN JOHNSON, JARVIS JOHNSON, JULIE JOHNSON, TRACY KING, OSCAR LONGORIA, RAY LOPEZ, EDDIE LUCIO III, ARMANDO MARTINEZ, TREY MARTINEZ FISCHER, TERRY MEZA, INA MINJAREZ, JOE MOODY, CHRISTINA MORALES, EDDIE MORALES, PENNY MORALES SHAW, SERGIO MUÑOZ, JR., VICTORIA NEAVE, CLAUDIA ORDAZ PEREZ, EVELINA ORTEGA, LEO PACHECO, MARY ANN PEREZ, ANA-MARIA RAMOS, RICHARD RAYMOND, RON REYNOLDS, EDDIE RODRIGUEZ, RAMON ROMERO JR., TONI ROSE, JON ROSENTHAL, CARL SHERMAN, SR., JAMES TALARICO, SHAWN THIERRY, SENFRONIA THOMPSON, JOHN TURNER, HUBERT VO, ARMANDO WALLE, GENE WU, AND ERIN ZWIENER; AND THE FOLLOWING IN THEIR CAPACITIES AS LEGISLATIVE EMPLOYEES: KIMBERLY PAIGE BUFKIN, MICHELLE CASTILLO, RACHEL PIOTRZKOWSKI, AND DONOVON RODRIGUEZ,
Relators.

On Petition for Writ of Mandamus

to 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 Acting Secretary of State of the State of Texas;

and Glenn Hegar, in his official capacity as Comptroller of Public
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INTRODUCTION

Recognizing that “one of the greatest threats to liberty is the accumulation of excessive power in a single branch of government,” the Texas Constitution guarantees the separation of powers. *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239 (Tex. Crim. App. 1990) (en banc). Relators’ petition—backed by leaders from both major parties—asks only that the Court honor that guarantee.

Respondents have little to say about the separation of powers. They admit that, despite Governor Abbott’s stated intention to punish legislators, his veto is unconstitutional as to legislators’ salaries—leaving over 2,100 staffers to bear the economic brunt of the veto. Resp. at 2, 16. Respondents then baldly assert that the Legislature “can continue to fulfill its duties if the veto takes effect.” *Id.* at 15. But Respondents fail to explain how the Legislature can fulfill its duties without any staff at all, much less how the nonpartisan agencies will function.

Instead, Respondents focus on jurisdictional arguments, contending that Relators are unharmed by the defunding of their positions and loss of income. But Respondents’ arguments ring hollow

given the ongoing harms the Governor’s veto inflicts on the Legislature and its staff.

The question now is whether the Court will allow full briefing to inform thorough consideration of these important issues. It should. Governor Abbott’s veto of the Legislature’s funding presents a vital question of not a “preferred policy outcome[],” Resp. at 1, but of Texas constitutional law: whether one branch of government may effectively abolish another. If accepted, Respondents’ position would allow the Governor to eliminate funding for any branch or constitutional office that declines to follow his wishes—be it the Legislature now or the judiciary tomorrow.

The Court “cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution; [we] cannot pass it by because it is doubtful; . . . [we] must decide it.” *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 777 (Tex. 2005) (quotations omitted). The Court should therefore order full briefing to address this “serious question.” Tex. R. App. P. 52.8(b).¹

¹ Relators intend to provide a complete response to Respondents’ merits arguments, as well as further argument concerning jurisdiction, if afforded full briefing.

ARGUMENT

I. The Court Has Jurisdiction to Resolve this Dispute and Should Order Full Merits Briefing

A. Relators' Claims Are Ripe Because the Governor's Veto Is Harming Them Now

Relators were harmed the moment Governor Abbott vetoed Article X funding and Respondents failed to take the required ministerial steps to enroll and publish the law. The facts have therefore “developed sufficiently so that an injury has occurred or is likely to occur.” *Patterson v. Planned Parenthood of Houston & Southeast Texas, Inc.*, 971 S.W.2d 439, 442 (Tex. 1998). Further delay will only exacerbate these injuries.

1. The veto is already harming the Legislative Employee Relators as they rearrange their lives to plan for the imminent loss of their salaries. They are front-loading expenses and medical appointments, App. E ¶ 8, App. B ¶ 6, eliminating expenses, App. B ¶ 6, selling possessions, *id.*, revisiting plans to purchase a home and prepare for a wedding, App. A ¶ 7, and cancelling vacations, App. E ¶ 9. They are experiencing considerable stress as a result. *Id.* ¶ 4; App. C ¶ 12.

These staffers also face imminent future harm in the form of lost income and benefits. A controversy is ripe if parties “demonstrate that the harm is imminent, but has not yet impacted them.” *Waco Ind. School*

Dist. v. Gibson, 22 S.W.3d 849, 852 (Tex. 2000). The full force of the veto will land in less than two months: as of September 1, staff will have difficulties making ends meet, App. A ¶ 5, supporting their families, App. B ¶ 5, App. C ¶¶ 10–11, paying rent, App. D ¶ 7, and buying groceries, App. E ¶ 7. They may have to drop out of school. App. A ¶ 6. And the loss of health insurance will disrupt necessary medical screenings, *id.* ¶ 8, and continuity of critical medications, App. E ¶ 5.

2. As to the Legislative Member Relators, Respondents have conceded that the veto is unconstitutional to the extent it attempts to eliminate legislators’ salaries—although they fail to acknowledge whether the Comptroller will pay the warrants. Resp. at 16. But the veto also eliminates the funding legislators need to do their jobs effective September 1. That is not only an imminent future injury: the legislators must plan now for that shortfall, expending staff time and resources. And—more troublingly—the Governor’s veto presently exerts coercive pressure on legislators to do his bidding to get their funding back.

3. Respondents assert that this controversy is unripe because “the Legislature *may* pass, and the Governor *may* sign” an appropriation.

Resp. at 1, 7 (emphasis added). But even so, that would not remedy the injury to our constitutional structure: any other policies passed this special session, under these circumstances, cannot be deemed the will of the Legislature. Regardless, it is Respondents’ defense—not Relators’ claims—that “depend[s] on . . . contingencies being resolved in a specific, adverse way.” *Id.* at 7. The “hypothetical possibility” that future actions moot Relators’ claims does not obviate the harm they are experiencing now. *Patterson*, 971 S.W.2d at 442. It is relief from the unconstitutional veto that is speculative; the injury is not. Indeed, while the Governor added Article X to the special session call, he has not represented that he will sign an appropriation, and the Speaker of the House has stated that the Governor “expects us to deliver” on the Governor’s bills first. *See* Reena Diamante (@reenajade), Twitter (July 7, 2021, 2:49 PM CT), <https://twitter.com/reenajade/status/1412861350892691461>.

In the context of election law, this Court has adopted a “bright-line rule—a set time after which judicial proceedings may be commenced and actively prosecuted, even if legislative action remains a possibility.” *Perry v. Del Rio*, 66 S.W.3d 239, 256 (Tex. 2001). That bright line is “the adjournment of the Legislature’s regular session,” even if subsequent

action in special session “is quite possible.” *Id.* The mere possibility of developments in the special session therefore has no bearing on ripeness. Delaying adjudication of this dispute would only compound the coercive effect of the veto and the uncertainty for legislators and staff.

B. Relators Have Standing for the Same Reasons

1. Respondents’ standing arguments fail for the same reasons. Notwithstanding the speculative possibility of further action in a special session, *see* Resp. at 8–9, Relators are both experiencing actual injury today and facing “certainly impending” injury in a matter of weeks.² *In re Abbott*, 601 S.W.3d 802, 812 (Tex. 2020).

Respondents repeatedly mischaracterize Relators’ claims. Respondents suggest that Relators complain of “the Governor’s mere threat to withhold funding,” Resp. at 9, but the Governor made good on that threat with his veto. Similarly, Relators’ injury does not accrue simply “because funding for a branch of government is open to debate at

² Respondents’ argument regarding rollover funds is hard to parse. The amount of such funds is irrelevant; “[f]or standing purposes, a loss of even a small amount of money is ordinarily an ‘injury.’” *Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 983 (2017). And the absence of substantial rollover funds only undermines Respondents’ argument that the Legislature can function in the absence of further appropriations. *See* Resp. at 15.

the beginning” of a legislative session, *id.*—it accrued because Governor Abbott eliminated that funding after the session was adjourned.

2. Respondents further assert that the Legislative Member Relators cannot sue to redress their institutional injuries. Resp. at 10. But those injuries are inseparable from their financial ones. The legislators “have been deprived of something to which they *personally* are entitled,” *Raines v. Byrd*, 521 U.S. 811, 821 (1997) (emphasis added): their funding, without which they cannot discharge their functions free from undue pressure. That is why the Court has held that members of the judiciary, see *Vondy v. Comm’rs Court of Uvalde Cnty.*, 620 S.W.2d 104 (Tex. 1981), and school districts, *Neeley*, 176 S.W.3d at 775, may sue to obtain funding for their duties. And neither of the veto examples Respondents offer, Resp. at 10, come anywhere close to this veto, which would eliminate all funding for a co-equal branch of government.

3. Respondents’ arguments as to traceability, Resp. at 10–12, falter on similar grounds as their ripeness analysis. The Comptroller’s imminent refusal to pay Relators’ salaries harms them now. And the Deputy Secretary of State’s failure to publish the duly enacted appropriations bill as required, see Tex. Const. art. IV, § 21; Tex. Gov’t

Code § 405.14, harms Relators by impeding the disbursement of funding. *See Resp.* at 5–6.

Respondents’ arguments boil down to a complaint that the petition does not name the Governor—even though they admit this Court has no jurisdiction to issue a writ of mandamus against him, that the petition names officials who can provide relief, and that past cases have recognized exactly the sort of relief Relators seek. *Resp.* at 11–12. The petition does not name the Governor because there is nothing for this Court to order him to do: when he issued the unconstitutional veto, his role was complete. Respondents also speculate that the Comptroller (and other state officials) might ignore the veto and pay Relators, *see Resp.* at 12, but that hypothetical possibility does not defeat standing. Even if the Governor’s veto was one link in the causal chain, Respondents’ decisions to abide by it are the proximate cause of Relators’ injuries and provide a basis for standing.

C. The Court Has Jurisdiction Over Every Respondent

Respondents do not dispute this Court’s jurisdiction as to the Comptroller, and so their arguments as to the Executive Clerk and the Deputy Secretary of State would not dispose of the petition. *See Resp.* at

4–6. But their arguments are also unfounded: the Deputy Secretary of State and Executive Clerk are both proper Respondents because their failure to treat Article X as valid law is harming Relators. Moreover, given that the Executive Clerk is charged with the administration of an essential part of the legislative process, and this proceeding “involves questions which are of general public interest and call for a speedy determination,” *Betts v. Johnson*, 73 S.W. 4, 5 (Tex. 1903), he should be treated as an officer within the ambit of Tex. Gov’t Code § 22.002(a).

D. The Political Question Doctrine Does Not Bar Review of the Governor’s Unlawful Attempt to Abolish the Legislature

Finally, Respondents assert that the constitutionality of Governor Abbott’s veto presents a nonjusticiable political question. Resp. at 12–14. But in both the state and federal systems, “political questions are a rarity.” *Neeley*, 176 S.W.3d at 780. In identifying them, this Court considers whether an issue “involve[s] either ‘a textually demonstrable constitutional commitment of the issue[s] to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving [them].’” *Id.* at 778 (quotation omitted). Neither applies here.

1. “Courts have historically exercised their jurisdiction,” *Ingleside v. Corpus Christi*, 469 S.W.3d 589, 592 (Tex. 2015), to decide issues concerning the separation of powers. *See* Pet. at 27–29. Whenever one branch “exceed[s] its authority, by usurping powers not belonging to it, its act is a nullity, not binding upon the other departments, and may be totally disregarded by them.” *Houston Tap & B. Ry. Co. v. Randolph*, 24 Tex. 317, 336 (1859). Review is particularly appropriate when one branch “aggrandiz[es] its power at the expense of another.” *Zivotofsky v. Clinton*, 566 U.S. 189, 197 (2012) (quotation omitted).

The Court has therefore often reviewed the constitutionality of the Governor’s vetoes. *See* Pet. at 25 (citing cases); *see also Pickle v. McCall*, 24 S.W. 265, 268 (Tex. 1893) (invalid for failing to specify a line item). Respondents assert that these cases “involve very specific aspects” of the veto power. Resp. at 13. But because the Governor’s veto power “exists only to the extent granted by the Constitution,” *Jessen Associates Inc. v. Bullock*, 531 S.W.2d 593, 598 (Tex. 2007), it is the courts that have the “ultimate authority” to decide whether the Governor’s veto transgresses the separation of powers. *Morath v. Texas Taxpayer & Student Fairness Coalition*, 490 S.W.3d 826, 846–47 (Tex. 2016).

Respondents rely on *Ex parte Perry*, but that case similarly recognized that the Governor’s veto power is effective only “if it is exercised in compliance with the state constitution.” 483 S.W.3d 884, 901 (Tex. Crim. App. 2016). *Ex parte Perry* also involved an effort to prosecute the Governor over a concededly valid veto, rather than the antecedent question of whether the Governor’s veto was itself lawful.

2. The judiciary has long possessed manageable standards for adjudicating separation-of-powers issues. Courts ask whether one branch has “assume[d]” or “unduly interfere[d] with” the exercise of powers vested in another branch. *Armadillo Bail Bonds*, 802 S.W.2d at 239; see *Pet.* at 27–30, 33–34 (citing additional cases). These familiar standards are no less manageable than the “admittedly imprecise” standards of “adequacy, efficiency, and suitability” that the Court relied upon in *Neeley*. 176 S.W.3d at 778. Rather, these principles “sound in familiar principles of constitutional interpretation.” *Zivotofsky*, 566 U.S. at 201.

3. Respondents’ other counterarguments are unpersuasive. Reviewing the Governor’s actions for constitutional defects neither “eliminate[s]” the Governor’s veto power nor allows the courts to “wield

the appropriations power.” Resp. at 13. It simply ensures that, like other government actions this Court reviews, the power is exercised in accord with the Constitution.

Respondents’ reliance on *Ninetieth Minnesota State Senate v. Dayton* illuminates why review here is crucial. 903 N.W.2d 609 (Minn. 2017). The Minnesota court refused to set aside that veto because the legislature had “sufficient funds available to sustain it as an independent, functioning branch of state government.” *Id.* at 622, 624. In contrast, Governor Abbott barred the Legislature from using rollover funds, even assuming they would be sufficient for its needs. His veto therefore prevents the Legislature from exercising its constitutional powers, raising the very circumstance distinguished in *Dayton*.

Given the issues at stake, the Court “must decide” the dispute at hand; it “cannot pass it by.” *Neeley*, 176 S.W.3d at 780. The Constitution’s guarantee of the separation of powers and the livelihoods of 2,100 state employees demand no less.

CONCLUSION

The Court should order full briefing.

Dated: July 8, 2021

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MANDAMUS CERTIFICATION

Under Texas Rule of Appellate Procedure 52.3(j), I certify that I have reviewed this reply and that every factual statement in the reply is supported by competent evidence included in the appendix or record. I further certify that, under Rule 52.3(k)(1)(A), every document contained in the appendix is a true and correct copy.

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CERTIFICATE OF SERVICE

I certify that on July 8, 2021, this document was served via e-File upon counsel of record in this proceeding.

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CERTIFICATE OF COMPLIANCE

I certify that this reply complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i)(2)(E) because, per Microsoft Word, this document contains 2,396 words, excluding the portions of the document exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

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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; TEXAS AFL-CIO; HOUSE DEMOCRATIC CAUCUS; MEXICAN AMERICAN LEGISLATIVE CAUCUS; TEXAS LEGISLATIVE BLACK CAUCUS; LEGISLATIVE STUDY GROUP; THE FOLLOWING IN THEIR CAPACITIES AS MEMBERS OF THE TEXAS HOUSE OF REPRESENTATIVES: ALMA ALLEN, RAFAEL ANCHÍA, MICHELLE BECKLEY, DIEGO BERNAL, RHETTA BOWERS, JOHN BUCY, ELIZABETH CAMPOS, TERRY CANALES, SHERYL COLE, GARNET COLEMAN, NICOLE COLLIER, PHILIP CORTEZ, JASMINE CROCKETT, YVONNE DAVIS, JOE DESHOTEL, ALEX DOMINGUEZ, HAROLD DUTTON, JR., ART FIERRO, BARBARA GERVIN-HAWKINS, JESSICA GONZÁLEZ, MARY GONZÁLEZ, VIKKI GOODWIN, BOBBY GUERRA, RYAN GUILLEN, ANA HERNANDEZ, GINA HINOJOSA, DONNA HOWARD, CELIA ISRAEL, ANN JOHNSON, JARVIS JOHNSON, JULIE JOHNSON, TRACY KING, OSCAR LONGORIA, RAY LOPEZ, EDDIE LUCIO III, ARMANDO MARTINEZ, TREY MARTINEZ FISCHER, TERRY MEZA, INA MINJAREZ, JOE MOODY, CHRISTINA MORALES, EDDIE MORALES, PENNY MORALES SHAW, SERGIO MUÑOZ, JR., VICTORIA NEAVE, CLAUDIA ORDAZ PEREZ, EVELINA ORTEGA, LEO PACHECO, MARY ANN PEREZ, ANA-MARIA RAMOS, RICHARD RAYMOND, RON REYNOLDS, EDDIE RODRIGUEZ, RAMON ROMERO JR., TONI ROSE, JON ROSENTHAL, CARL SHERMAN, SR., JAMES TALARICO, SHAWN THIERRY, SENFRONIA THOMPSON, JOHN TURNER, HUBERT VO, ARMANDO WALLE, GENE WU, AND ERIN ZWIENER; AND THE FOLLOWING IN THEIR CAPACITIES AS LEGISLATIVE EMPLOYEES: KIMBERLY PAIGE BUFKIN, MICHELLE CASTILLO, RACHEL PIOTRZKOWSKI, AND DONOVON RODRIGUEZ,
Relators.

On Petition for Writ of Mandamus

to 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 Acting Secretary of State of the State of Texas;

and Glenn Hegar, in his official capacity as Comptroller of Public
Accounts of the State of Texas

APPENDIX

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Declaration of Kimberly Paige Bufkin.....	A
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**Tab A:
Declaration of Kimberly
Paige Bufkin**

Declaration of Kimberly Paige Bufkin

I, Kimberly Paige Bufkin, declare under penalty of perjury as prescribed in Tex. Civ. Prac. & Rem. Code § 132.001 that the following is true and correct:

1. I currently serve as Chief of Staff to Texas State Representative Ana Hernandez (District 143), whose offices are located in the State Capitol complex. I have served in that position since January 2021.

2. As Chief of Staff, my job responsibilities include, but are not limited to, serving as chief advisor to Representative Hernandez on policy and district objectives; assisting in the development and execution of Representative Hernandez's legislative and district plans and objectives; overseeing action plans and responses to district and constituent needs; planning and coordinating communication for social media, district outreach, and press; supervision of Capitol office and district office staff; management of the office budget and logistics; and other duties as assigned.

3. As a legislative staffer, I receive a monthly paycheck from the State Legislature. I also receive health insurance and retirement benefits through my employment.

4. I understand that, if Governor Abbott's veto is allowed to stand, I may no longer be paid for my work effective September 1, and that I may need to obtain health insurance via COBRA shortly thereafter. I've received no information about whether I will be able to backfill any retirement contributions if my pay is later restored.

5. I currently live and split expenses with my fiancé. If my salary is disrupted, it will be more challenging for us to make ends meet. The possibility that my salary will be disrupted and the need to make plans for that eventuality is very stressful and contributes to substantial anxiety for my fiancé and I. I also worry about my colleagues with children who must be experiencing even more stress.

6. The Governor's veto is already disrupting my ability to plan for the future. I am currently in a criminology and criminal justice master's degree program at Northeastern University, for which I've already completed two semesters. Unless I receive additional certainty about my salary and employment status, I will not be able to pay my tuition on September 1 and may be forced to drop out of the program, potentially wasting my hard work.

7. Similarly, my fiancé and I's shared life plans have been disrupted by the fact that I may soon lose my salary. Among other things, we've questioned whether we can afford to purchase a house—an important goal of ours—and paused moving forward with certain aspects of our upcoming wedding and reception.

8. My state-provided health insurance is also immensely important to me. I require annual medical screenings and tests that will be disrupted if I lose my health insurance, and also take several prescription medications. I am reluctant to obtain insurance through COBRA because, in my experience, it has been inordinately expensive for even a short period of time (to the tune of over \$600 dollars a month). Any disruption in my health insurance is therefore a significant source of stress for me and a potential risk to my health.

9. Because, as I understand it, I am not being terminated, it is unclear whether I will be able to obtain unemployment assistance. To ensure that we can make ends meet, I am considering taking a second job. I am committed to public service and do not wish to leave the State Legislature, for which I have worked for most of the last five years. It's hard to imagine working anywhere else. However, that leaves me with few options, because the Governor's veto has stopped the funding for the entire Legislative branch—making it impossible to consider working for another Legislative office or committee. I have also considered taking out an additional credit card or other loans to cover future expenses.

My name is Kimberly Paige Bufkin, my date of birth is January 28, 1993, and my work address is located in the State Capitol complex. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, Texas on: July 7, 2021.



Kimberly Paige Bufkin

**Tab B:
Declaration of Donovan J.
Rodriguez**

Declaration of Donovan J. Rodriguez

I, Donovan J. Rodriguez, declare under penalty of perjury as prescribed in Tex. Civ. Prac. & Rem. Code § 132.001 that the following is true and correct:

1. I currently serve as Chief of Staff to Texas State Representative Ray Lopez (District 125), whose offices are located in the State Capitol complex. I have served in that position for two years, and have been a state employee for a total of seven years. I am also a member of the Texas State Employees Union.

2. My duties include leading a team of full time employees, volunteers, and contractors in a coordinated effort to serve 200,000+ constituents in Texas House District 125. This includes regularly attending neighborhood association meetings, community events, and other public meetings to meet constituents where they're at, gather input from the public, provide resources and give updates on our office efforts; heavy policy research on a wide array of topics and familiarity with state government protocol and procedures; and maintaining relationships with local officials, advocates and stakeholders to support policy research and amplify outreach efforts.

3. I understand that, if Governor Abbott's veto is allowed to stand, I may no longer be paid for my work effective September 1, and that I may need to obtain health insurance via COBRA shortly thereafter. It is unclear whether I will be able to backfill any retirement, life insurance, or medical savings account contributions if my pay is later restored. There is also substantial uncertainty about how legislative staffers will be able to do our jobs, including whether we can keep our badges and

Capitol access and remain connected to Capitol email accounts and servers to ensure a continuation of services to our constituents.

4. I am the sole breadwinner for my family, which includes my wife and one-year-old daughter. Our family has regular doctor visits to monitor my wife's healing due to complications from giving birth. My daughter goes to the doctor regularly for check ups, immunizations, and recently needed an x-ray of her hips. We have access to this care because of the benefits I receive from my state insurance.

5. If my salary and health insurance are disrupted, it will be immensely challenging for my family to make ends meet and will have immediate impact on our housing, among other essentials. The possibility that my salary will be disrupted and the need to make plans for that eventuality is very stressful and contributes to substantial anxiety for my wife and I—especially against the backdrop of raising our first child through the pandemic, the recent winter storm, and other stressors.

6. In preparation for the potential loss of my salary, my wife and I have made a conscious effort to evaluate our finances and see how we can reduce our expenses and live on less. This includes refinancing a vehicle, paying off small debts, eliminating subscriptions and memberships, and looking for alternative housing. We're immediately feeling the effects as my income now is going to payments and savings to try to give us a little breathing room in the near future. We have begun to sell some of our possessions through Facebook Marketplace to save additional money. Finally, we have stocked up on baby supplies and other goods to ensure that we never run out if there's a lapse in income.

7. Because, as I understand it, I am not being terminated, it is unclear whether I will be able to obtain unemployment assistance. To make ends meet my wife and I would also consider payday loans, credit cards, and other potential options to pay for essentials and that unfortunately creates a long term issue relating to our credit. To the extent any student loan payments come due, we would also consider delaying those payments to the extent possible. My wife and I may need to devote additional resources and attention to our passion projects including her recently published children's book and I'd immediately be looking for additional income.

8. My grandmother was a longtime civil servant, a retired state employee, who taught me about the value of public service. She also taught me that getting a good government job would provide career stability and the ability to provide for my family. I strongly want to continue my employment in the legislature, but I am distressed, to say the least, that Governor Abbott's veto has made it harder for legislative staffers to do our jobs and to make ends meet.

9. I've worked for the Texas Legislature for the last seven years, and would experience great difficulty in starting over with a new career path. But because the Governor's veto affects the entire Legislature, positions with other members and some state offices are unavailable. If my salary is suspended for a substantial period of time, I would therefore need to think about other potential employment options, as would many of my colleagues. To leave the Legislature at such a pivotal moment, and to fall back down the career ladder and into a new career, would be both personally heartbreaking and financially difficult for my family.

My name is Donovan J. Rodriguez, my date of birth is December 25, 1991, and my work address is located in the State Capitol complex. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Bexar County, Texas on July 7, 2021.

A handwritten signature in cursive script that reads "Donovan J. Rodriguez".

Donovon J. Rodriguez

Tab C:
Declaration of Michelle Castillo

Declaration of Michelle Castillo

I, Michelle Castillo, declare under penalty of perjury as prescribed in Tex. Civ. Prac. & Rem. Code § 132.001 that the following is true and correct:

1. I currently serve as Chief of Staff for State Representative James Talarico.
I have served in that position for two and a half years.
2. As Chief of Staff to Representative Talarico, my job entails overseeing our Capitol team and operations including our constituent management work. Our office policy is to respond to every unique constituent inquiry we receive; that translates to both tracking all incoming and outgoing communication as well as writing hundreds of letters in response. It also means problem-solving and coordinating with multiple state agencies on behalf of constituents on a variety of requests.
3. I am paid on the first business day of each month.
4. My paycheck includes several deductions before taxes. I contribute to my retirement fund on a pre-tax basis. I also pay premiums for health insurance, short-term disability insurance, and long-term disability insurance.
5. The State also contributes to my health insurance, and pays for all of my basic life insurance.
6. I am married, with one daughter who is an infant. My daughter is also on my health insurance.

7. I understand that, if Governor Abbott's veto is allowed to stand, I may no longer be paid for my work effective September 1.
8. If I am not drawing a paycheck, I will not be able to contribute to my health insurance, disability insurance, and retirement fund on a pre-tax basis.
9. I am not confident that the State would continue to pay their portion of my health insurance premium, or my basic life insurance, after September 1. When I asked the payroll department what would happen to my insurance on September 1, I was told that there was no plan in place yet, but that the department was hopeful the situation would have resolved by then. It is also not clear whether I will be able to backfill any retirement contributions if my pay is later restored. And it is not clear whether an interruption in benefits would preclude me from accessing them later. For example, short-term disability requires you to be enrolled for a certain period before accessing benefits. I do not know whether an interruption due to Governor Abbott's veto would re-start the clock on my eligibility for those benefits.
10. I am currently the primary breadwinner for my family, and my daughter is depending on me. I do not have the luxury of simply assuming that things will change before September 1.
11. During the pandemic, my husband and I were nervous about finding safe childcare for our daughter, particularly during the busy rush of the

legislative session. We decided together that my husband would step away from his job and become her primary caregiver. As a result, my entire family depends on my income, which is now at risk.

12. The knowledge that I may have to find another job soon to support my family is extremely stressful. This is especially the case if the Legislature is no longer an option because I know how few opportunities there are in Austin for people with my skill set—and I will be competing with the thousands of other legislative staffers who will also be looking for work. The one thing we thought we could count on—the stability of my job and our family’s basic income—is no longer there. That fear adds a layer of chaos to an already difficult situation.

My name is Michelle Castillo, my date of birth is September 2, 1987, and my work address is located in the State Capitol complex. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, Texas on: July 7, 2021.



Michelle Castillo

**Tab D:
Declaration of Brian Wheat**

Declaration of Brian Wheat

I, Brian Wheat, declare under penalty of perjury as prescribed in Tex. Civ. Prac. & Rem. Code § 132.001 that the following is true and correct:

1. My date of birth is November 30, 1984, and I currently serve as a Software Engineer for the Texas Legislative Council, which is located in Austin. I have served in that position for five years.

2. In that role, I support and build the software that the legislature uses to organize the process of making bills into law. My job is non-partisan and apolitical.

3. I am also a dues-paying member of the Texas State Employees Union, known as the TSEU. I joined the TSEU because I wanted to be more engaged in issues affecting my livelihood. That has borne out: TSEU has been looking out for state employees' interests, including showing up for us to fight cuts to our benefits.

4. I understand that the TSEU is an affiliate of the Texas AFL-CIO.

5. As a Software Engineer, I receive a monthly paycheck from the State Legislature. I also receive health and retirement benefits, and I contribute to my retirement account through my paycheck on a pre-tax basis.

6. I understand that, if Governor Abbott's veto is allowed to stand, I may no longer be paid for my work effective September 1. I may also be forced to obtain health insurance via COBRA. It is unclear whether I will be able to backfill any retirement contributions if my pay is later restored.

7. If my salary and health insurance are disrupted, it will be challenging for me to make ends meet. I would have trouble paying rent, buying food, paying my car loan, and paying utilities.

8. Because, as I understand it, I am not being terminated, it is unclear whether I will be able to obtain unemployment assistance. I would therefore have to start looking for a new job, including potentially outside the Legislature, if I were a casualty of this political mudslinging theatre.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Austin, Texas on June 30 2021.


Brian Wheat

Tab E:
Declaration of Rachel
Piotrkowski

Declaration of Rachel Piotrkowski

I, Rachel Pearl Piotrkowski, declare under penalty of perjury as prescribed in Tex. Civ. Prac. & Rem. Code § 132.001 that the following is true and correct:

1. I currently serve as Legislative Director for State Representative Armando Walle. I have served in that position for 3 years.
2. As Legislative Director, I am responsible for representing the concerns of constituents in House District 140 throughout the legislative process. I plan, organized and implemented community forums and public meetings to increase constituent engagement with state agencies. For example, following the disastrous flooding in HD 140 caused by Tropical Storm Imelda, I helped organize a public forum to directly connect affected constituents with their representatives in Congress, the Texas Division of Emergency Management (TDEM), the Harris County Flood Control District (HCFCD), the Red Cross and relevant relief entities. Further, the constituent experiences shared at that forum, and similar community forums we plan, directly influence the legislation we filed and passed this session. It takes time for capitol staff to build relationships with local officials and community leaders in the district, but once those relationships are fostered the districts' voice is amplified in the capitol by staff like me. I answer the phones every day and help constituents navigate complex, bureaucratic systems and processes. My job is to advocate for individual constituents and the district as a whole.

3. This job is hard work. During the legislative session, I regularly get to the office at 8:00 a.m. and often leave at 1:00 or 2:00 a.m. the next morning. During this past session, some committee meetings went until 4:00 a.m. I easily work ten-hour days, and regularly work 70- to 80-hour weeks. If I assume I work a 70-hour week (a conservative estimate), my salary works out to about \$7.14/hour—less than the Texas minimum wage. I don't do this job for the pay: I do it because I believe in serving the people of Texas and of Representative Walle's district.
4. Everyone should have a feeling of security when they do their job well, and this veto has undermined mine. The prospect of losing my salary and benefits in September is particularly stressful because it follows on the heels of a stressful year. We were called to service during the COVID-19 pandemic, and so I put all of my energy into doing the best I could to serve the people of Texas. Between the pandemic and the ERCOT power failure, Texans have lurched from crisis to crisis. Now, just when I thought I saw the end of the tunnel with the end of the legislative session, another crisis has emerged. I am burnt out. The prospect of losing my salary and benefits is emotionally distressing.
5. In addition to my modest salary, I receive my health insurance through the State. Our medical insurance program provides good benefits, which are very important to me—in fact, they are one of the reasons I took this job. I take a regular medication for which continuity of care is critical. I am worried that if I lose my health insurance, I will no longer be able to access that medication. Even if I am able to find new health insurance, a different insurance provider

may require me to switch to a different medication, which could negatively impact my health.

6. Having good health insurance is particularly important to me because my income as a State employee is not very high. It is very difficult to live on my income in Austin, especially as housing prices have gone up significantly, and housing stock has shrunk, during the pandemic. My rent is expensive.
7. Even before Governor Abbott vetoed the funding for my job, I had to supplement my income with a stipend from Representative Walle's campaign. And even with that additional funding source, my financial situation remains precarious—and would be entirely disrupted by any major unanticipated expenditures. The elimination of my legislative salary only worsens my lack of financial security. If I had to rely only on my campaign stipend, I could pay my rent and my regular utility bills—and nothing else, not even groceries.
8. I am planning ahead now for the loss of my legislative staff salary. I am scheduling all of my health care appointments for before September 1, out of fear that I will lose my insurance after that point. I am also taking care of expenses that I know I might not be able to meet later, such as new tires for my car.
9. I am also reducing unnecessary expenses now in anticipation of losing a significant portion of my income. For example, I had planned to take a vacation this summer, but now I am unable to do so.
10. Even if our funding were to be restored after September 1, the lapse would cause an enormous disruption. Because I am paid monthly, there is a long gap

between paychecks. I must plan everything around the knowledge that I will be paid at the beginning of the month, so it would take several months to catch up again financially even after funding is restored.

11. It is typical, right after the legislative session ends, for staffers to receive calls from recruiters and numerous job offers. Because of the Governor's veto and the prospect that I will lose my salary and benefits, this month marks the first time in seven years that I have taken those calls and considered looking for work outside the Legislature. To be clear, I deeply believe in the Legislature's work and do not wish to leave—but the Governor's veto has forced me to consider it.

My name is Rachel Pearl Piotrkowski, my date of birth is June 23, 1992, and my work address is located in the State Capitol complex. I declare under penalty of perjury that the foregoing is true and correct.

Executed in Travis County, Texas on: July 7, 2021.

Rachel Piotrkowski
Rachel Pearl Piotrkowski

Tab F:
Tex. Const. art. IV, § 21

Vernon's Texas Statutes and Codes Annotated
Constitution of the State of Texas 1876 (Refs & Annos)
Article IV. Executive Department

Vernon's Ann.Texas Const. Art. 4, § 21

§ 21. Secretary of State

Currentness

*** Start Section

...

Sec. 21. There shall be a Secretary of State, who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall continue in office during the term of service of the Governor. He shall authenticate the publication of the laws, and keep a fair register of all official acts and proceedings of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto, before the Legislature, or either House thereof, and shall perform such other duties as may be required of him by law. He shall receive for his services an annual salary in an amount to be fixed by the Legislature.

Credits

Amended Nov. 3, 1936; Nov. 2, 1954.

Editors' Notes

INTERPRETIVE COMMENTARY

2007 Main Volume

The office of secretary of state was authorized by the Constitution of 1845 and has been continued by each constitution since, including that of 1876. The constitutional duties of the secretary of state are inclusive of keeping the seal of the state to be used under the direction of the governor; he attests all commissions, authenticates the publication of the laws, and keeps a record of official acts and proceedings of the governor. Moreover he appoints notaries public for each county and, with the governor and attorney general, approves printing contracts.

The constitution further directs that he shall perform such other duties as may be required of him by law. In accordance with this power, the legislature has conferred upon him by statute many other duties some of which are little related to the original character and purpose of the office.

The Constitution of 1876 makes this office the only non-elective one of those constitutional offices making up the executive department. He is appointed by the governor with the concurrence of the senate for a two year term.

There was debate concerning this at the constitutional convention in that certain persons thought there was no reason why the secretary of state should not be elected. It was asserted that the people wanted all of the officers elected and that the secretary of state could not act independently when his office depended upon the will of the governor. However, since the secretary of state is closely associated with the governor the idea prevailed that he should be appointed.

The Constitution of 1876 set the compensation of this officer at two thousand dollars per year. In order to grant him an adequate salary, the constitution had to be amended which was done in 1937 and made his compensation six thousand dollars annually.

In November, 1954, this section was amended, abolishing the fixed constitutional limitation on the salary of the Secretary of State and authorizing the Legislature to establish his salary. But the legislature's power is limited by Article 3, Section 61, also adopted in November, 1954, which provides that any salary which the Legislature adopts may not be less than the \$6,000 provided by the 1936 amendment.

Relevant Additional Resources

Additional Resources listed below contain your search terms.

HISTORICAL NOTES

The 1936 amendment, proposed by Acts 1935, 44th Leg., S.J.R. No. 14, p. 1221 and adopted at the Nov. 3, 1936 election, substituted "Six Thousand (\$6,000.00) Dollars" for "two thousand dollars" in the last sentence.

The 1954 amendment, proposed by Acts 1953, 53rd Leg., S.J.R. No. 5, p. 1168 and adopted at the Nov. 2, 1954 election, substituted "in an amount to be fixed by the Legislature" for "of Six Thousand (\$6,000.00) Dollars, and no more" in the last sentence.

Earlier Constitutions:

Const.1845, Art. 5, § 16.

Const.1861, Art. 5, § 16.

Const.1866, Art. 5, § 16.

Const.1869, Art. 4, § 17.

RESEARCH REFERENCES

Encyclopedias

67 TX Jur. 3d State of Texas § 21, Appointment of Secretary of State; Duties.

Relevant Notes of Decisions (4)

[View all 7](#)

Notes of Decisions listed below contain your search terms.

In general

The provisions of the Constitution relating to the exercise of the privileges and duties of the governor in communicating officially with the legislature clearly contemplates that these functions must be exercised in written communications as this is clearly contemplated by this section, which prescribes the duties of the secretary of state. *Manor Casino v. State* (Civ.App. 1896) 34 S.W. 769.

Powers, generally

The Intangible Assets Act (Acts 1905, 29th Leg., p. 351, ch. 146), which makes the secretary of state and the comptroller, required by this section and § 23 of this Article to perform prescribed executive duties and such others as may be prescribed by law, members of a state tax board with power to value the intangible assets of railroads and for the distribution of the values for local taxation, is not void as vesting in them judicial powers. *Missouri, K. & T. Ry. Co. of Texas v. Shannon* (Sup. 1907) 100 Tex. 379, 100 S.W. 138.

Reports

The secretary of state was required to make report of receipts and expenditures. *Madden v. Hardy* (Sup. 1899) 92 Tex. 613, 50 S.W. 926.

Fees

The secretary of state could not charge a fee of one dollar for making indorsement on railroad bonds required by Rev.Civ.St.1895, art. 4581i (see, now, Vernon's Ann.Civ.St. art. 6528). *State v. Hardy* (Sup. 1900) 93 Tex. 340, 55 S.W. 322.

Vernon's Ann. Texas Const. Art. 4, § 21, TX CONST Art. 4, § 21

Current through legislation effective June 7, 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.

Tab G:
Tex. Gov't Code § 405.14

Vernon's Texas Statutes and Codes Annotated
Government Code (Refs & Annos)
Title 4. Executive Branch (Refs & Annos)
Subtitle A. Executive Officers (Refs & Annos)
Chapter 405. Secretary of State (Refs & Annos)
Subchapter B. Duties

V.T.C.A., Government Code § 405.014

§ 405.014. Acts of the Legislature

Effective: September 28, 2011
Currentness

(a) At each session of the legislature the secretary of state shall obtain the bills that have become law. Immediately after the closing of each session of the legislature, the secretary of state shall bind all enrolled bills and resolutions in volumes on which the date of the session is placed.

(b) As soon as practicable after the closing of each session of the legislature, the secretary of state shall publish and maintain electronically the bills enacted at that session. The electronic publication must be:

(1) indexed by bill number and assigned chapter number for each bill; and

(2) made available by an electronic link on the secretary of state's generally accessible Internet website.

Credits

Acts 1987, 70th Leg., ch. 147, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 297, § 4, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., 2nd C.S., ch. 8, § 2.48, eff. Sept. 1, 1991; Acts 2011, 82nd Leg., 1st C.S., ch. 4 (S.B. 1), § 20.01, eff. Sept. 28, 2011.

Notes of Decisions (1)

V. T. C. A., Government Code § 405.014, TX GOVT § 405.014

Current through legislation effective June 7, 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.

Tab H:
Tex. R. App. P. 52.8(b)

Vernon's Texas Rules Annotated
Texas Rules of Appellate Procedure
Section Three. Original Proceedings in the Supreme Court and the Courts of Appeals
Rule 52. Original Proceedings (Refs & Annos)

TX Rules App.Proc., Rule 52.8

52.8. Action on Petition

Effective: June 1, 2020
Currentness

(a) *Relief Denied.* If the court determines from the petition and any response and reply that the relator is not entitled to the relief sought, the court must deny the petition. If the relator in a habeas corpus proceeding has been released on bond, the court must remand the relator to custody and issue an order of commitment. If the relator is not returned to custody, the court may declare the bond to be forfeited and render judgment against the surety.

(b) *Interim Action.* If the court is of the tentative opinion that relator is entitled to the relief sought or that a serious question concerning the relief requires further consideration:

- (1) the court must request a response if one has not been filed;
- (2) the Supreme Court may request full briefing under Rule 55;
- (3) in a habeas corpus proceeding, the court may order that relator be discharged on execution and filing of a bond in an amount set by the court; and
- (4) the court may set the case for oral argument.

(c) *Relief Granted.* If the court determines that relator is entitled to relief, it must make an appropriate order. The court may grant relief without hearing oral argument.

(d) *Opinion.* When denying relief, the court may hand down an opinion but is not required to do so. When granting relief, the court must hand down an opinion as in any other case. Rule 47 is applicable to an order or opinion by a court of appeals except that the court of appeals may not order an unpublished opinion published after the Supreme Court or Court of Criminal Appeals has acted on any party's petition for extraordinary relief addressing the same issues.

Credits

Eff. Sept. 1, 1997.

Notes of Decisions (438)

Rules App. Proc., Rule 52.8, TX R APP Rule 52.8
Current with amendments received through May 15, 2021

End of Document

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