

NO. 24-0884

IN THE SUPREME COURT OF TEXAS

In re Texas House of Representatives,
Relator

On a Petition for Writ of Injunction
to Preserve the House's Constitutional Authority

RELATOR'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE

This brief supports an original petition for writ of mandamus or injunction sought against the Texas Department of Criminal Justice.

It is related to (but not an appeal of) a temporary restraining order granted by the Honorable Jessica Mangrum in the 53rd District Court under cause number D-1-GN-24-008489 on October 17, 2024. Further proceedings are pending in that court at the time of this briefing.

STATEMENT OF JURISDICTION

This Court has jurisdiction under its constitutional statewide civil judicial authority and its exclusive statutory authority to issue writs of mandamus or injunction against officers of the executive departments of the state. TEX. CONST. art. V, § 3(a); TEX. GOV'T CODE § 22.002(c).

ISSUES PRESENTED

This brief presents two related separation of powers issues drawn from the substance and subsidiary issues fairly included in the original petition:

- 1 May the Texas Legislature issue—and must the executive yield to—a subpoena if it temporarily interrupts the imposition of a prisoner’s sentence?
- 2 May this Court grant—and must the executive yield to—relief if it temporarily interrupts the imposition of a prisoner’s sentence?

STATEMENT OF FACTS

In brief, a legislative committee issued a subpoena for the testimony of a condemned prisoner that interrupted his execution. The executive branch took exception and refused to honor the subpoena. That impasse remains today.¹

Less briefly, on October 16, 2024, the Committee on Criminal Jurisprudence (“Committee”) of the Texas House of Representatives (“House”) held a public hearing. The topic was “[c]riminal procedure related to capital punishment and new science writs under Article 11.073, Code of Criminal Procedure.” App. Tab 3. The Committee received testimony and materials about the “junk science writs” created by that article, with particular attention to the case of Robert Roberson—a death row inmate who had previously sought (and been denied) relief under Article 11.073—which the Committee felt crystallized some of the deficiencies in that law. *10/16/24 Hearing*.² The testimony was compelling and shined a light on facts about both the case and how the law had been applied that the Committee had never before been privy to, especially some

¹ To avoid the distraction of excessive citation, Relator notes that every sentence of this Statement of Facts is directly supported by the Declaration of Joe Moody found at Appendix Tab 5. Only other relevant sources will cited in this section.

² For brevity, hearings of the Committee will be cited by date alone. Fully cited, these are:

- Hearing Before the House Comm. on Crim. Jur., 88th Leg. Interim (Oct. 16, 2024)(recording available from the House Video/Audio Services Office).
- Hearing Before the House Comm. on Crim. Jur., 88th Leg. Interim (Oct. 21, 2024)(recording available from the House Video/Audio Services Office).
- Hearing Before the House Comm. on Crim. Jur., 88th Leg. Interim (Oct. 22, 2024)(recording available from the House Video/Audio Services Office).

Complete audio-video recordings of each hearing can be found at <https://hourse.texas.gov/videos/committees>.

secondhand indications of the difficulties Roberson had within our justice system as a person with autism. *Id.*

At the end of the hearing, the Committee unanimously voted to issue a subpoena for Roberson and appointed a sergeant-at-arms to serve it. *Id.*; App. Tab 4. The subpoena directed Roberson, who was in the custody of the Texas Department of Criminal Justice (TDCJ), to appear and attend a Committee hearing on October 21, 2024 (the earliest possible next hearing date under House rules³) to “provide all relevant testimony and information into relevant criminal procedure matters posted by the committee for . . . future hearings.” App. Tab 6. The subpoena was attested by the Clerk of the House and promptly served on Roberson’s counsel, who accepted service for him. It was signed by Committee Chair Joe Moody, Committee Sergeant-at-arms Ellic Sahualla, and Roberson’s attorney, Gretchen Sween. *Id.* It was later discovered that its service block contained a typographical error in one of the agent’s alternative titles (indicating agency from the “Committee on General Investigating and Ethics”). *Id.* However, it also provided for service by a sergeant-at-arms or agent of the House, indicated that the person signing was the sergeant-at-arms for the Committee, was actually signed by the sergeant-at-arms of the Committee under the authority of the House, and was in all other respects styled as a subpoena of the Committee. *Id.*

³ House Rule 4, Sec. 11(c) requires that notice of a meeting be posted five days in advance.

The subpoena was issued so that Roberson could provide the Committee with in-person testimony about his perspective on the investigation, prosecution, and appellate proceedings in his case to shed light on how Article 11.073 has functioned and how it could be legislatively improved. *See 10/16/24 Hearing* (providing context for subpoena). The Committee also believed that his testimony on access to justice and due process would be unique because he is a person with autism in a case unlike any other in the State of Texas—the first potential “shaken baby syndrome” execution. Finally, since no other person could provide that information and given the dispute over some facts in Roberson’s case, the Committee deemed it essential to hear from him personally to judge his credibility as a witness.

At the time of the subpoena, Roberson was scheduled to be executed the next day, and Relator quickly came to believe that TDCJ intended to carry the execution out despite the subpoena, which would have made it impossible for Roberson to comply and provide invaluable testimony to the Committee. To head that off, Relator obtained a temporary restraining order granted by the Honorable Jessica Mangrum on October 17, 2024. App. Tab 1. The Texas Office of the Attorney General (OAG) represented TDCJ at that hearing, and after the TRO was granted, OAG swiftly turned to the Court of Criminal Appeals, which hours later purported to vacate the TRO and greenlight the execution “effective immediately” with “[n]o motions for rehearing [to] be entertained” and “[t]he Clerk of this Court . . . to issue mandate immediately.” *In re Tex. Dep’t of Criminal*

Justice ex. rel. Ken Paxton, No. WR-96,121-01, 2024 WL 4512269, at *1–2 (Tex. Crim. App. Oct. 17, 2024).

Following that order, Relator petitioned this Court for an injunction to prevent an irreparable harm—the killing of the witness it sought—and was granted temporary relief that precluded TDCJ from impairing Roberson’s testimony in any way, including by his execution.

Justice Young’s concurrence in issuing that temporary relief tacitly encouraged the parties to “reach an accommodation on their own.” *In re Texas House of Representatives*, No. 24–0884, slip op., at *3 (Tex. Oct. 17, 2024)(orig. proceeding)(Young, J., concurring). Relator took that admonition seriously, which led to many efforts and offers towards reaching an agreement with the executive branch.

Just after this Court’s initial intervention on October 17, 2024, Chair Moody spoke with TDCJ’s Director of Correctional Institutions, who offered compliance either through Roberson’s virtual or in-person testimony at the Capitol. He further confirmed that testimony in-person was “fine by [TDCJ],” which was willing to “do whatever [the Committee] wanted,” and a logistics call was scheduled for the next morning (October 18, 2024).

That call involved representatives from the Committee, the House, the Department of Public Safety, and TDCJ. Over the course of an hour, the group worked out a mutually agreeable plan for in-person public testimony that addressed all security and public safety concerns that were raised—including

moving the hearing to a different room within the Capitol to accommodate TDCJ—as well as Roberson’s own needs as a person with autism. The meeting was memorialized in a follow-up email by Representative Jeff Leach. After that, miscellaneous details were ironed out, a hearing room mockup was developed and approved for security purposes, and civilian clothing and transportation were arranged for Roberson. Ultimately, every party agreed and was ready to proceed.

At around eight o’clock that evening, Chair Moody received an email from OAG indicating that due to concerns for public safety and security—and, charitably, Roberson’s wellbeing—only virtual testimony would be permitted. There was no phone call or communication with Committee staff, the proper point of contact for procedural matters, so the email was not seen until the next day. The chair then sent an email requesting more information about how the virtual testimony would work.

In the meantime, Roberson’s attorney sent a letter objecting to virtual testimony as particularly unsuitable because of Roberson’s autism. (Those concerns were borne out in testimony at the next Committee hearing, where experts on autism, some of whom had personally met Roberson, said that virtual testimony would have little value and may even be misleading given his condition. *10/21/24 Hearing*.)

On the morning of October 21, 2024, Chair Moody called OAG to explain why virtual testimony, a matter of the chair’s sole discretion under House rules, was not appropriate and could not be accepted. Various other options were

proposed, and the chair promised to take all reasonable steps to accommodate in-person testimony in a way that satisfied TDCJ—which, of course, had already been satisfied. OAG confirmed that it did not intend to allow Roberson to be brought to the Capitol and raised concern that the Committee might send a peace officer to collect him; Chair Moody responded that he would not create that kind of standoff out of respect for TDCJ and in hopes of collaboratively solving the problem. An email followed to memorialize parts of that call, and OAG was provided with Moody’s direct mobile number after promising to respond to the options discussed.

During that time, a number of other meetings and ongoing communications took place between members of the Committee and representatives of the executive branch. Those members were told in no uncertain terms that the executive branch would not cooperate with the subpoena and that the Committee would “never meet” with Roberson for a public hearing at the Capitol. Several other ideas were exchanged, and after softening to some form of meeting, executive branch representatives indicated there were multiple acceptable options, including the Committee meeting in-person with Roberson at his place of incarceration. That hearing was to be audio-recorded only (no video), which the Committee found suboptimal but accepted in the spirit of cooperation and because that is sometimes done for field hearings.

On the morning of October 22, 2024—while the Committee’s hearing remained “at ease” and pending, and with the understanding that the audio-only,

TDCJ-based hearing was still approved—there was a meeting with executive branch representatives to discuss this litigation. The parties agreed that they would jointly sign a request to terminate this litigation since the hearing would rectify the issue. As an act of good faith, Chair Moody then adjourned the still-pending hearing. *10/22/24 Hearing*.

Hours later, on a flight back to El Paso, Chair Moody was informed that the executive branch would no longer permit any form of hearing with Roberson (a complete departure from prior discussions) and would only jointly sign a letter in which he and Representative Leach would admit that Roberson was a murderer, that they had overstepped their authority, and that no legislative committee should ever act similarly in the future. The proposed letter had the tenor of an apology. That offer was rejected.

Nonetheless, the Committee continued to faithfully work towards a resolution, with ongoing communication through intermediaries. OAG, for its part, busied itself with a “press release” it put on its official state website titled “Office of the Attorney General Sets the Record Straight About Nikki Curtis’s Death, Rebutting Jeff Leach’s and Joe Moody’s Lies About Convicted Child Murderer.” Ken Paxton, Attorney General of Texas, Oct. 23, 2023, *available at* <https://www.texasattorneygeneral.gov/news/releases/office-attorney-general-sets-record-straight-about-nikki-curtiss-death-rebutting-jeff-leachs-and-joe>.

Each of Relator’s attorneys in this case was, as a practical matter, forced to divert attention to crafting a detailed response to the press release during the

accelerated briefing period here. *See generally* Joe Moody, Jeff Leach, Rhett Bowers, & Lacey Hull, *Response to OAG's Release About Robert Roberson Case*, Oct. 24, 2024, *available at* <https://static.texastribune.org/media/files/a142510564e03b916d77bef52bc651c4/Roberson%20Rebuttal.pdf> (responding to OAG press release).

Despite OAG having Chair Moody's personal direct number, what it did not do during that period was make good on its promise to respond to the proposals made for Roberson's testimony. After being emailed once again, however, its response on the evening of Friday, October 25th was that it had no intention of working out access to Roberson since the date of the hearing had passed and the hearing had adjourned.

In light of that fact, the reality that Roberson's execution was no longer imminent, and out of respect for this Court's limited resources, Chair Moody once again offered to jointly sign a more neutral pleading stating that the parties had no need to continue this litigation and wished it to be dismissed if the audio-only, TDCJ-based hearing that had previously been approved was allowed. The response was that no hearing (and therefore, no subpoena compliance) remained the executive branch's position.

SUMMARY OF THE ARGUMENT

The high-level separation of powers issues here affect not only legislative subpoena power over Roberson or in other death penalty cases, but over all prisoners, because there is no legal difference between an execution and any other sentence in this context. In turn, that may impact the entire legislative subpoena power with respect to the executive.

Relator's (properly the House, since its delegated legislative authority is being impeded) Committee issued a subpoena in proper form for the valid legislative purpose of securing unique, valuable information to use in developing legislation. That legislative subpoena did not impinge on the separation of powers because it did not assume the powers of another branch, like judicial habeas (which demands justification for detention) or executive clemency (which is an act of grace). It also did not unduly burden the executive branch because it had only an incidental and temporary overlap into an executive arena rather than usurping it. It was also time- and subject-limited in a way that could not ultimately upset anything—the subpoena would leave Roberson in custody sentenced to die, and its effect on that process was minimal and narrowly tailored.

This is also a conflict between the constitutional authority of the House (Article III lawmaking power) and the ordinary statutory authority of TDCJ (Code of Criminal Procedure provisions), which means there is no true separation of powers issue and the subpoena should prevail. No current or historical evidence suggests that resolving it in favor of the House's

constitutional power would create a slippery slope, especially given the House's own procedural safeguards. Finally, since TDCJ has a legal duty to assist committees of the House, it should be ordered to do so here.

Ultimately, this Court's intervention is proper because this is not a political question, nor would it be prudent to introduce that doctrine into an interbranch dispute for the first time here. It is properly a legal dispute, and this Court has civil jurisdiction over it notwithstanding the criminal issues indirectly affected. An extraordinary writ is appropriate because this is a question of law, a writ is the proper enforcement mechanism, and the wide-ranging implications for state government here urge extraordinary original jurisdiction. Finally, with the limited and uncertain role of the Court of Criminal Appeals in this matter, this Court is the last resort for settling this separation of powers issue—one all other branches must yield to.

ARGUMENT

It is arguable that the real-world disputes at the root this case are now moot: This Court’s temporary order has already delayed Roberson’s execution, the date for the specific hearing he was subpoenaed for has already passed, and the clock is ticking towards a new legislative session that will automatically dissolve the Committee. But this case raises weighty, complex separation of powers issues that only this Court can resolve. These are still very much pending since the Committee may again subpoena Roberson or other prisoners and since the executive branch has shown no willingness to work out its differences with the legislative branch or meet its statutory duty to assist the Committee.

Legally, we may proceed because it is not “impossible for a court to grant any effectual relief whatever to the prevailing party.” *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 689 (Tex. 2022)(quoting *Campbell-Ewald Co. v. Gomez*, 577 U.S. 153, 161 (2016)). A decision would likewise not be an “advisory [opinion] because” it would “remedy[] an actual or imminent harm [not] a hypothetical injury.” *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444 (Tex. 1993). In short, extraordinary relief from this Court is required so that the Committee can exercise its constitutional authority to secure Roberson’s testimony.

It is also important to recognize how broad the issue is. This case is not only about an execution and a prisoner, but about any sentence and any prisoner. A sentence of death is just that—a sentence. In a subchapter titled “ordinary felony punishments,” our law holds that “[a]n individual adjudged guilty of a

capital felony . . . shall be punished by imprisonment in the Texas Department of Criminal Justice for life without parole or by death.” TEX. PEN. CODE § 12.31(a). That is listed alongside all other possible punishments down to fine-only class C tickets. *See generally id.* ch. 12 (prescribing Penal Code punishments). The imposition of a death sentence is also provided for among all other provisions for “execution of judgment” in all criminal cases. *See generally* TEX. CODE CRIM. PROC. ch. 43 (providing for “execution of judgment”).

Similarly, although there are obviously some procedures specific to relief in capital cases (which could also be said for a traffic ticket or any number of other things), there is no functional difference between a death sentence and any other sentence. The same clemency authority applies to all punishments, including capital punishment. *See generally* TEX. CONST. art. IV, § 11(b)(establishing executive clemency power); TEX. CODE CRIM. PROC. ch. 48 (governing same). The same habeas authority applies to all punishments, including capital punishment. *See generally* TEX. CONST. art. V, §§ 3 & 5 (establishing judicial habeas power); TEX. CODE CRIM. PROC. ch. 11 (governing same); *see also id.* art. 11.21 (defining constructive custody).

Temporary interruption of the imposition of death is therefore no different than temporary interruption of the imposition of any other sentence. The same policy concerns are present for all prisoners, whether an action by another branch would have the side effect of postponing (but not stopping) an execution or whether it would temporarily postpone incarceration by “literally

produc[ing a prisoner’s] body outside of his prison cell,” as OAG’s motion for reconsideration put it. The only difference is practical and favors the executive accommodating the other branches of government—if another branch requires a prisoner, execution is the only sentence that can forever frustrate that branch’s legitimate purpose.

A Legislative Subpoena May Temporarily Interrupt a Sentence
Separation of powers cannot leave the Texas Legislature powerless

Subsidiary questions have been raised throughout this case about whether either Relator or this Court are properly grappling with these matters. Although these concerns can be seen as technical “outs” that should not be dispositive of the broader constitutional questions before this Court, they are worth briefly addressing here. However, one other question that has been repeatedly raised in an incendiary manner by OAG in both other pleadings and public forums is *not* worth addressing: the disputed underlying facts of Roberson’s case. Succinctly, we disagree. OAG’s insistent focus on the facts of the case is primarily a political consideration that has no bearing whatsoever on the legal issues here.

Relator is properly the House but has standing even if misnamed

At least one amicus letter has suggested that Relators do not and may not defend the interests of the House. That is a mistaken argument that conflates the legal process with the legislative process.

The Texas Legislature is unusually time-restricted in its operations. Constitutional restrictions on the length and timing of legislative sessions ensure

that it is out of session more often than not. *See* TEX. CONST. art. III, §§ 5(a), 24(b), & 40; art. IV, § 8 (providing for legislative operations). However, because “[t]he legislature believes that it must conduct its activities on a full-time and continuing basis in order to achieve efficiency and continuity in performing its duties,” it enacted the Legislative Reorganization Act of 1961 “to authorize legislative committees . . . to work and meet their responsibilities regardless of whether the legislature is in session.” TEX. GOV’T CODE § 301.012.

The Act was an exercise of authority under the Texas Rules of Proceedings Clause⁴ to choose the “most advantageous” methods for exercising Article III lawmaking power, including the inherent authority to investigate and inquire. *See Terrell v. King*, 14 S.W.2d 786, 789 (1927)(stating that clause authorizes House to choose its methods for conducting investigations and inquiries under lawmaking power, including through committees); *McGrain v. Daugherty*, 273 U.S. 135, 174 (1927)(“the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary to the legislative function”). The Act empowers committees to perform a number of duties, including “investigations to collect adequate information and materials necessary to perform its duties.” TEX. GOV’T CODE § 301.014(a)(2). It also authorizes the House to delegate the power to issue necessary process to its standing committees. *Id.* § 301.024. The House has done exactly that in its rules. *See* TEX. H. RULE 3 § 7 (establishing

⁴ TEX. CONST. art. III, § 11. Section 11 is one of the opening sections of Article III, Texas Constitution. While “Article III of our constitution has become a lengthy document over the years[, i]ts opening sections, however, date to the advent of Texas statehood or before. They establish the foundational pillars of the legislature’s constitutional authority, of which section [11] is a structural component.” *In re Abbott*, 628 S.W.3d 288, 298 (Tex. 2021)(orig. proceeding).

Committee and defining its jurisdiction); *id.* RULE 4, § 21(a)(authorizing standing committees to issue process to witnesses at any place in Texas).⁵

Since the House granted authority to the Committee to exercise this constitutional power to compel witnesses, it is the House’s authority that is imperiled in this case. *See* TEX. GOV’T CODE § 301.024(a) (providing that standing “committee may issue process if authorized by . . . the creating house”). And because the House is not in session, only the Committee may act to ensure that this authority is not rendered ineffective.⁶

Yet even if this Court decided it is solely the Committee’s authority at stake here, then at worst, the designation of the House as Relator is a misnomer that has not prejudiced any other party. *See In re Greater Houston Orthopaedic Specialists, Inc.*, 295 S.W.3d 323, 325–26 (Tex. 2009)(case involving ostensibly misnamed but factually understood plaintiff). Committees are creatures of their parent house, and the House functions through its committees. 1 GEORGE D. BRADEN ET AL., THE TEXAS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS 177 (1977); *see* TEX. GOV’T CODE § 301.013 (providing methods for establishing committees). There is no chance any party

⁵ *The Greenbook* and similar sources suggest distractingly long citation formats for House rules, which will be cited a number of times here. Relator would offer that the rules found at <https://www.house.texas.gov/pdfs/resources/House-Rules.pdf> are accurate, and these will simply be cited by rule number. They were adopted by H.R. 4, 88th Leg., R.S., 2023 H.J. of Tex. 49.

⁶ It is also not legally (or logically) true that the Senate must approve House representation or vice versa. Section 301.061, Government Code, covers representation of “the legislature” as a whole, not one house, and was created to provide a process for speaking as one legislative branch in litigation. *See generally* Tex. S.B. 877, 73rd Leg., R.S. (1993)(enacting § 301.061). Clearly, there will be instances when either of the two chambers will need to protect its own constitutional authority even if the other chamber is not similarly situated.

did not know who issued the subpoena and which parent house authorized its issuance. *See In re Greater Houston*, 295 S.W.3d at 326 (holding actual harm governs “flexibility in . . . misnomer case”). Standing remains because the Committee has suffered an injury by TDCJ’s noncompliance that is redressable here. *See State v. Zurawski*, 690 S.W.3d 644, 658 (Tex. 2024)(outlining standing requirements). No party is operating under “the mistaken assumption that” another party filed this proceeding or any proceeding below—they have been noticed, appeared, and filed offensive and defensive pleadings. *See In re Greater Houston*, 295 S.W.3d at 326 (providing similar fact pattern). If there is a misnomer, its remedy is simply a correction of Relator’s name.

The subpoena was valid in both purpose and form

Our law provides clear statutory authority for a legislative subpoena. TEX. GOV’T CODE § 301.024. OAG itself has noted, though, that the legislative subpoena power is actually constitutional, since the “commonly accepted view is that a legislature’s authority to enforce subpoenas . . . is an inherent power of a sovereign legislative body rather than a power ‘properly attached’ exclusively to the judicial branch.” Tex. Att’y Gen. Op. No. GA-1057 (2014). These powers are vested not only in the Texas Legislature as a whole, but in “a committee of the House of Representatives,” and they “do[] not violate article II, section I . . . of the Texas Constitution,” which provides for separation of powers. *Id.*

That supports what the United States Supreme Court has “often noted”: that “the power to investigate is inherent in the power to make laws because [a]

legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change.” *Eastland v. U.S. Servicemen’s Fund*, 421 U.S. 491, 504 (1975)(quoting *McGrain*, 273 U.S. at 175). Texas jurisprudence has long made the same recognition. *E.g.*, *Terrell*, 14 S.W.2d at 789 (affirming legislative investigative power in 1927). The reason is clear: A legislative body must have a “power of inquiry—with process to enforce it” because otherwise, “[w]ithout information, [the legislature] would be shooting in the dark.” *Trump v. Mazars USA, LLP*, 591 U.S. 848, 862 (2020). This power is “broad” and “indispensable” and includes “inquiries into the administration of existing laws, studies of proposed laws, and ‘surveys of defects in our social, economic, and political system for the purpose of enabling the [legislature] to remedy them.’” *Id.* (quoting *Watkins v. United States*, 354 U.S. 178, 187 & 215 (1957)).

The subpoena had a valid legislative purpose

Fundamental separation of powers principles demand that a court’s inquiry into legislative actions be limited: “The courts should not go beyond the narrow confines of determining that a committee’s inquiry may fairly be deemed within its province.” *Tenney v. Brandhove*, 341 U.S. 367, 378 (1951), *cited by Eastland*, 421 U.S. at 506; *cf. Mazars*, 591 U.S. at 862–63 (congressional subpoena valid if serving “valid legislative purpose” and “concern[s] a subject on which legislation could be had”). “It simply is not consonant with our scheme of government for a court to inquire into the motives of legislators.” *Bogan v. Scott-Harris*, 523 U.S.

44, 55 (1998). Here, a valid legislative purpose exists—obtaining unique testimony about the real-world applications and implications of a state law—and second guessing it would actually create a separation of powers issue of its own since the legislative branch controls its own internal functioning.

These federal cases typically arise where the subject of an inquiry sues a legislator to resist a congressional subpoena—if the subpoena is a valid exercise of congressional power, the legislator is protected by absolute legislative immunity⁷ and the court will not interfere with the subpoena. *E.g.*, *Eastland*, 421 U.S. at 510 (considering suit over legislative subpoena). Legislative immunity is not directly implicated in this case only because TDCJ did not file suit to avoid the subpoena; it simply refused to comply. Continued executive resistance to the Committee’s lawfully issued subpoena prevents the Committee from fulfilling its constitutional duties, burdens it by redirecting attention from legislating (including necessary fact-finding) to litigating, and intrudes on its decision-making processes. *See Bogan*, 523 U.S. at 54 (finding legislators should not be subjected to cost, inconvenience, and distractions of trial).

High courts from several other states have taken a similar approach to determining legitimate purposes for legislative subpoenas. *See, e.g.*, *Office of the Governor v. Select Comm. of Inquiry*, 858 A.2d 709, 736 (Conn. 2004) (“it would be constitutionally perverse to conclude that it would be a violation of the

⁷ This Court has also recognized the legislative immunity doctrine. *See, e.g.*, *In re Perry*, 60 S.W.3d 857, 859 (Tex. 2001)(orig. proceeding) (“Texas and federal courts have recognized that individuals acting in a legislative capacity are immune from liability for those actions” and not “required to testify about their legislative activities”)(citing *Bogan*, 523 U.S. at 49).

separation of powers doctrine for the legislature to discharge its constitutional responsibilities” to conduct an investigation in an impeachment proceeding); *Conn. Indem. Co. v. Superior Court*, 3 P.3d 868, 873 (Cal. 2000)(approving subpoena for records related to resources of liable parties); *Ward v. Peabody*, 405 N.E.2d 973, 977 (Mass. 1980)(subpoena appropriate when touching “those areas in which [the Legislature] may potentially legislate or appropriate.”); *In re Joint Legislative Comm., etc.*, 32 N.E.2d 769, 771 (N.Y. 1941)(“[w]e cannot say as matter of law, upon the record at hand, that the subpoena now challenged would be futile as an aid to the legislative inquiry”). When courts have questioned legislative purpose, it has been when subpoenas were overbroad or without stated purpose. *E.g.*, *Lunderstadt v. Pa. House of Representatives Select Comm.*, 519 A.2d 408, 414 (Pa. 1986)(holding subpoenas for records of “sixty months coverage of broad categories of financial statements” a “fishing expedition”); *State ex rel. Joint Comm. on Gov Fin. v. Bonar*, 230 S.E.2d 629, 633 (W. Va. 1976)(no showing of relevancy and materiality of documents to proper legislative purpose).

In this case, the record shows an overtly stated, logical legislative purpose and the subpoena is narrowly tailored to a single person and activity to achieve it. Notably, once the Committee determined Roberson’s testimony was necessary, it acted right away and scheduled him for the earliest possible date to minimize delay. *See* TEX. H. RULE 4, § 11 (public hearing may not be scheduled unless notice posted “at least five calendar days in advance of the hearing”). If its intentions were dilatory, it could have subpoenaed Roberson for any time—

months later—during the legislative interim, and it could have also acted sooner instead of carefully considering testimony and deferring to the greatest extent possible to the other branches.

The subpoena was in proper form

Turning to the supposed defects in the subpoena, they are of no moment. Other filings have cited a typo, which might suggest that an agent of another committee served process for the Committee, as a reason to invalidate the subpoena entirely. However, our courts have held that even “strict compliance” does not mean “obedience to the minutest detail,” and that “[a]s long as the citation and return show, with reasonable certainty, that the citation was served . . . , service of process will not be invalidated.” *Regalado v. State*, 34 S.W.2d 852, 854 (Tex. App.—Corpus Christi 1996, no writ)(quoting *Herbert v. Greater Gulf Coast Enters.*, 915 S.W.2d 866, 871 (Tex. App.—Houston [1st Dist.] 1995, no writ). That has led to typographical misidentification of the serving agent being repeatedly validated. *E.g.*, *Payne & Keller Co. v. Word*, 732 S.W.2d 38, 41 (Tex. App.—Houston [14th Dist.] 1987, writ ref’d n.r.e.)(discrepancy between agent name in citation and return); *Popkowsi v. Gramza*, 671 S.W.2d 915, 918 (Tex. App.—Houston [1st Dist.] 1984, no writ)(same). Moreover, the return reflects the signature of the Committee’s actual sergeant-at-arms. App. Tab 4; accord 10/16/24 Hearing; cf. *Martell v. Tex. Concrete Enters. Readymix*, 595 S.W.3d 279, 283–84 (Tex. App.—Houston [14th Dist.] 2020, no pet.)(reviewing cases where facial errors in subpoena and return irrelevant when corrected elsewhere in document or

record). And finally, the party sought by the subpoena—Roberson—has not taken exception to its form, either personally or through his very active counsel.

It has also been suggested that the Speaker is required to sign a subpoena. That is simply untrue. First, the Government Code requires that the “committee chairman shall issue in the name of the committee all subpoenas and other process as directed by the committee.” TEX. GOV’T CODE § 301.024(b). But even under the House’s rules, the requirement that a subpoena be signed by the Speaker applies only to “subpoenas issued by order of the house” as whole, not a specific committee. TEX. H. RULE 1, § 13. The procedures for *committee* subpoenas, on the other hand, mirror the language of the Government Code exactly. *Id.* RULE 4, § 21(a). The claim that the Speaker must sign a committee subpoena also flies in the face of a historical record of numerous committee subpoenas signed only by the chair. *See, e.g.*, App. Tab 7 (example of prior legislature committee subpoena signed by chair).

Lastly, the subpoena’s validity has already been judicially admitted. This court has long recognized that a party’s assertion of fact during the course of litigation “that is clear and unequivocal has conclusive effect and bars the admitting party from later disputing the admitted fact.” *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d 562, 568 (Tex. 2001)(quoting *Gevinson v. Manhattan Constr. Co.*, 449 S.W.2d 458 (Tex. 1969)). Perhaps the most detailed consideration of judicial admissions is the five-factor test formulated by the Fifth Court:

- (1) the declaration relied upon must have been made in the course of a judicial proceeding;
- (2) the declaration was contrary to an essential fact embraced in

the theory of recovery or defense asserted by the party; (3) the statement was deliberate, clear, and unequivocal; (4) giving conclusive effect to the declaration would not run contrary to public policy; and (5) the declaration related to a fact upon which a judgment for the opposing party was based.

Peck v. Peck, 172 S.W.3d 26, 31 (Tex. App.—Dallas 2005, pet. denied).

During proceedings on the TRO, counsel for OAG was directly asked by the court, “is the Subpoena sent by the Legislature a valid, legal Subpoena?” and the reply was affirmative, an answer accepted by the court in making its decision. App. Tab 2, R.R. at 15. The proffered response in other pleadings—that the answer was equivocal because it was couched as “to [OAG attorney’s] knowledge”—is unpersuasive since outside of quotation or rank speculation, all statements at all times are made “to the speaker’s knowledge.”

Separation of powers is not breached by a subpoena

The considerations above are almost immaterial compared to the issue that actually warrants this Court’s attention and intervention—the proper separation of powers, which will define the lanes of government now and for future Texans. Justice Young’s concurring opinion here recognized as much by calling for a “laser-like focus on the specific civil-law questions presented—and especially the competing authority of the legislative and executive branches in this situation.” *In re Texas House of Representatives*, No. 24–0884, at *3.

The subpoena does not assume the powers of another branch

To that end, although the facts here are novel, the law is well-known. Texas courts have adopted a two-part test for whether there has been a separation of

powers violation. *Nelson v. True Texas Project*, 685 S.W.3d 187, 190–91 (Tex. App.—Amarillo 2024, no pet.). A violation occurs when: “(1) one branch assumes, or is delegated, a power that is more properly attached to another or 2) one branch unduly interferes with another so that the other cannot effectively exercise its constitutionally assigned powers.” *Id.*; see *Tex. Ass’n of Bus.*, 852 S.W.2d at 444 (“governmental authority vested in one department of government cannot be exercised by another department unless expressly permitted by the constitution”); *In re Turner*, 627 S.W.3d 654, 660 (Tex. 2021) (“the interference by one branch of government with the effectual function of another raises concerns of separation of powers”).

Under the first prong, the Committee is only exercising the power the Texas Constitution grants it, the scope of which is broad and includes the right to have its subpoena of Roberson honored. “The power and authority of a state legislature is plenary and its extent is limited only by the express or implied restrictions thereon contained in or necessarily arising from the Constitution itself.” *Gov’t Services Ins. Underwriters v. Jones*, 368 S.W.2d 560, 563 (Tex. 1963). The legislative power includes the right to adopt or change rules of procedure for our courts. *Id.* As discussed in detail in the section above, it is well settled that constitutional lawmaking power includes the power to conduct inquiries to aid in identifying the need for and the development of legislation. *E.g. McGrain*, 273 U.S. at 165–74 (review of nationwide “legislative practice, congressional enactments, and court decisions” on legislative investigation).

Moreover, the subpoena does not assume the powers of either the judiciary or the executive. It is unquestionable that the Court of Criminal Appeals makes final determinations in criminal cases. The Committee has not and will not ask this Court to address Roberson’s sentence or any concerns in his case, and no action of the Committee will undo or even affect his sentence beyond the subpoena’s one-time side effect of temporary interruption.

It is likewise plain that the subpoena is not a writ of habeas corpus, “an order issued by a court or judge of competent jurisdiction, directed to any one having a person in his custody, or under his restraint, commanding him to produce such person, at a time and place named in the writ, *and show why he is held in custody or under restraint.*” TEX. CODE CRIM. PROC. art. 11.01 (emphasis added). This very distinction was explored in a recent opinion by Justice Gorsuch, who noted that writs of habeas corpus and subpoenas were historically similar, but that in modern practice, the purpose of a subpoena is to secure testimony, while the purpose of a writ is a due process accounting of detainment. *Edwards v. Vannoy*, 593 U.S. 255, 283–84 (2021)(Gorsuch, J., concurring). The Committee’s subpoena is the former and has no effect on Roberson’s death sentence or even TDCJ’s restraint of him, since he will remain under that sentence and restraint while complying with the subpoena.

The Committee also acknowledges and is not intruding into the executive power of clemency, despite the subpoena’s one-time side effect of temporarily interrupting the final imposition of Roberson’s sentence. A conceptually similar

situation was explored in *Martinez*, which asked whether the Texas Legislature had usurped the executive’s clemency power by decriminalizing certain conduct retroactively. *Martinez v. State*, 503 S.W.3d 728, 731 (Tex. App.—El Paso 2016, pet. ref’d). The court held that it had not because while clemency is meant to extend an “act of grace” or avoid a miscarriage of justice, the legislature’s actions stemmed from its constitutional lawmaking powers. *Id.* at 735–36.

In this case, the Committee’s purpose was to obtain Roberson’s relevant testimony in order to understand whether and how to amend article 11.073 of the Code of Criminal Procedure. Doing so would not undermine the judgement and sentence in this case or the executive’s power to grant or deny him clemency, and the relief sought here is simply in vindication of Relator’s constitutional lawmaking power.

The subpoena does not unduly interfere with another branch

The second part of the separation of powers test is whether “one branch unduly interferes with another so that the other cannot effectively exercise its constitutionally assigned powers.” *Nelson*, 685 S.W.3d at 190–91. The “undue interference” test in turn has two parts. *Tex. Comm’n on Env’tl. Quality v. Abbott*, 311 S.W.3d 663, 672 (Tex. App.—Austin 2010, pet. denied). Courts first look at the scope of the first governmental actor’s constitutional powers then consider the impact of its actions on the second branch’s ability to carry out its own constitutional powers. *Id.*

Since “Texas courts have never held that the three branches of government operate with absolute independence, and have instead ‘long held that some degree of interdependence and reciprocity is subsumed within the separation of powers principle,’” the undue interference test is not rigid. *Martinez*, 503 S.W.3d at 734 (quoting *Abbott*, 311 S.W.3d at 671). The separation of powers doctrine itself “enjoins upon its branches separateness but interdependence, autonomy but reciprocity.” *Id.* (quoting *Abbott*, 311 S.W.3d at 672). The undue interference test “takes the middle ground between those who would seek rigid compartmentalization and those who would find no separation of powers violation until one branch completely disrupted another branch’s ability to function.” *Id.* at 742 (quoting *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239 (Tex. Crim. App. 1990)). So, while there may be some overlap of authority among the branches at times, that does not in itself violate separation of powers.

Instructively, after rejecting the argument that the legislature had assumed the executive’s clemency power by retroactively repealing a penal provision, the court in *Martinez* considered whether the legislature had nevertheless interfered with the executive branch. *Id.* at 744–45. The court noted that it is common to have overlapping authority between the branches, and this does not necessarily create interference. *Id.* at 744. For example, “the judicial branch is assigned the power to take action in a convicted defendant’s case following the entry of a verdict in a multitude of ways, some of which mimic the executive branch’s power to commute a sentence.” *Id.* “[D]espite that these two branches may

exercise their authority coextensively during the same time period, we find no authority that would lead us to conclude that exercise of its powers by one branch during this time period creates an ‘undue interference’ with the other branch's operations.” *Id.* Thus, the court held that the legislature’s power to repeal a penal provision does not interfere with the executive’s clemency power, “even though those powers can be exercised during the same time period and even though the exercise of those powers may both affect a defendant’s case.” *Id.* at 744–45.

Without belaboring the point, this Court conducted a similar analysis (with the same results) about the overlap of legislative and judicial power in *Jones*, a case about legislative continuances. *See Jones*, 368 S.W.2d at 562–64. This Court held that there was no separation of powers problem between the branches because, while the statute would “interfere somewhat with the operations of the judicial department of government,” a court requiring the attendance of a “legislator-attorney” during session would in turn somewhat interfere with the legislative branch. *Id.* at 564–65.

In this instance, the Committee’s subpoena was issued under its broad and exclusive lawmaking powers, and it does not prevent the other branches from exercising their own powers. The delay in Roberson’s execution is an incidental effect of the subpoena, one due to the unique circumstances of this case which are unlikely to be repeated. The judgements of the Court of Criminal Appeals in Roberson’s case still stand, and the executive may still carry out the sentence on Roberson or grant him clemency—the harm, if any, to those branches is

minimal. On the other hand, if the executive does not honor the subpoena, the Committee will forever lose unique, important testimony that is necessary to effectively carry out its lawmaking powers. Far from encroaching on the powers of another branch, the Committee is seeking relief to protect its own, and as this Court has recognized, separation of powers is a principle rooted not simply in separating responsibilities, but in “[c]hecks and balances among the branches.” *Fin. Comm’n of Texas v. Norwood*, 418 S.W.3d 566, 569 (Tex. 2013).

The Committee’s authority is constitutional; TDCJ’s is statutory

Very different sources of authority are also at play in this interbranch dispute. While the Committee’s authority to subpoena Roberson comes from its core constitutional powers, TDCJ’s authority to execute Roberson comes solely from statute rather than the executive branch’s core powers. *See generally* TEX. CODE CRIM. PROC. ch. 43 (providing authority to imprison and execute).

There is only a constitutional separation of powers issue when one government actor interferes “in a field constitutionally committed to” the control of another government actor. *In re Dean*, 393 S.W.3d 741, 747 (Tex. 2012) (quoting *Gen. Services Comm’n v. Little-Tex Insulation Co., Inc.*, 39 S.W.3d 591, 600 (Tex. 2001)); *State Bd. of Ins. v. Betts*, 308 S.W.2d 846, 851–52 (1958); *Holmes v. Morales*, 906 S.W.2d 570, 573–74 (Tex. App.—Austin 1995), *rev’d in part on other grounds*, 924 S.W.2d 920 (Tex. 1996). Agencies have no inherent constitutional authority, but rather are “creature[s] of the legislature.” *Pub. Util. Comm’n of Tex. v. GTE-Sm., Inc.*, 901 S.W.2d 401, 406 (Tex. 1995). “An agency may exercise only

those specific powers that the law confers upon it in clear and express language.” *Id.* at 407 (quoting *Kawasaki Motors v. Motor Vehicle Comm’n*, 855 S.W.2d 792, 797 (Tex. App.—Austin 1993, writ denied)). Moreover, the mere fact that an agency functions within the executive branch does not mean that it falls “within the scope of any constitutional authority granted [to the Governor] by article IV, section 10.” *Abbott*, 311 S.W.3d at 673. In the face of that claim, the Third Court held that there was no separation of powers issue in a dispute between the legislature and TCEQ since there was “no constitutional authority committed to the Commission.” *Id.* at 674.

When constitutional power confronts statutory power, this Court has repeatedly held that the former prevails. *E.g.*, *Waites v. Sondock*, 561 S.W.2d 772, 773 (Tex. 1977)(holding statutory mandatory continuance policy must yield to due process). There is, therefore, no separation of powers problem between the House and TDCJ. Since the House’s authority to subpoena Roberson comes from its core constitutional powers and TDCJ’s authority to execute Roberson comes from statute, the subpoena should take precedence.

The slope is not slippery; it is not even a slope

Previous pleadings have been unable to show that the Committee’s subpoena assumes or interferes with the constitutional powers of another branch, so they have resorted to slippery slope arguments that conjure up outlandish circumstances and issues not even present in this case. For example, page 19 of the OAG’s Motion for Reconsideration anticipates a request for a

permanent injunction. Yet one has not been and will not be made here, and such a request would demand an entirely different separation of powers analysis and an entirely different argument.

Similarly, page 2 of the Motion for Reconsideration imagines a lawless future where “*any criminal law*” can be invalidated with the legislative subpoena power and a defendant in a murder trial can make “a phone call to a House Committee,” obtain a subpoena, and then testify before his criminal trial to receive immunity from criminal prosecution. This doomsaying reveals a profound lack of respect for the integrity of the legislative process—one with no historical basis. The legislative subpoena power has rarely been used, and in its entire history, one has never before interrupted an execution. The facts of this case are highly unusual and unlikely to be repeated—what is really before this Court is the future propriety of the executive simply refusing a legislative subpoena in more routine matters.

Moreover, these far-fetched scenarios ignore the procedural safeguards within the House itself. Issuing a subpoena requires a supermajority vote, which for every committee in the House means significant bipartisan cooperation. *See* TEX. H. RULE 4 § 21(a) (establishing subpoena threshold). The vote to subpoena Roberson was unanimous. If the House were so easily corruptible that criminal relief could be auctioned off to the lobby not just by one member or party, but by an overwhelming majority of legislators, then curtailing its subpoena power

would affect nothing—the Texas Legislature makes and can unmake criminal laws and rules of procedure in the first place.

The fact is that these imagined ills, if ever realized, could be addressed by this Court and other means (not the least of which is at the ballot box). These determinations are routine for our courts in balancing constitutional rights and privileges against their abuse. *See, e.g.*, TEX. CIV. PRAC. & REM. CODE § 11.054 (establishing criteria for finding plaintiffs vexatious litigants). No one is required to “trust us”—any pattern or practice of abuse could be easily and rapidly curbed if it arose in the future. *See Jones*, 368 S.W.2d at 565 (“the circumstance that a power may be abused is not a valid basis for arguing that the power is non-existent”). So far, since 1846, no pattern of abuse has materialized.

TDCJ has an affirmative duty to assist the Committee

Not only must the executive yield to the subpoena—it has an affirmative legal duty to assist and produce Roberson. In aid of the constitutional authority to conduct investigations and inquiries, the Texas Legislature has authorized its committees to “request necessary assistance from all state agencies, departments, and offices.” TEX. GOV’T CODE § 301.028(a)(4). Once a committee requests assistance, “[e]ach state agency, department, and office *shall* assist” that committee. *Id.* § 301.028(b)(emphasis added). The term “shall” imposes a duty.” *Id.* § 311.016(2); *Garza v. Harrison*, 574 S.W.3d 389, 402 (Tex. 2019). That is, “[b]y its plain and common meaning, ‘shall’ denotes *mandatory* action.” *Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 131 (Tex. 2018)(emphasis

added). TDCJ was thus required to produce Roberson, who is in its custody, and certainly was not permitted to actively thwart the subpoena.⁸

Notably, OAG has the same legal duty—statute specifically names “the attorney general” as an entity that must cooperate with a committee when assistance has been requested. TEX. GOV’T CODE § 301.028(a)(4). OAG itself has acknowledged this form of legal duty in its opinions and rulings. *E.g.*, Tex. Att’y Gen. Op. No. OR2020-01870 (2020)(recognizing DPS as mandatory agent of House committee). The fact that it is now arrayed *against* the Committee only deepens the need for this Court to resolve these issues. Despite the Committee’s extensive and faithful efforts and TDCJ’s stated willingness to comply, this matter has far departed from the “[c]o-ordination or co-operation of two or more branches or departments of government in the solution of certain problems [that] is both the usual and expected thing.” *Betts*, 308 S.W.2d at 852.

This Court’s Relief May Temporarily Interrupt a Sentence

Separation of powers cannot leave this Court powerless

The political question doctrine looms over this case. However, this “Court has never held an issue to be a nonjusticiable political question, and [has] referred to the doctrine only in passing.” *Neeley v. W. Orange-Cove Consol. Indep. Sch. Dist.*, 176 S.W.3d 746, 780 (Tex. 2005). Since *Neeley*, the political question doctrine has been invoked in a case not about an interbranch dispute, but about whether Texas courts could second-guess decisions of the U.S. Army, a question requiring

⁸ We note that TDCJ routinely provides precisely this assistance to the judiciary. *See* TEX. CODE CRIM. PROC. art. 24.13 (providing for attachment for convict witnesses).

“inquiry into military judgments” beyond the judicial power. *Am. K-9 Detection Services, LLC v. Freeman*, 556 S.W.3d 246, 249–50 (Tex. 2018).

That is a far cry from the legal dispute here, which recalls this Court’s recent legislative funding case. *See In re Turner*, 627 S.W.3d at 660–61 (exploring dispute within legislature and between executive and legislators). Yet that case was resolved because the “dispute was one between the members of one branch rather than one between the branches” and that there was no imminent harm because defunding had not yet gone into effect, leaving time to “resolve the dispute.” *Id.* This case is an interbranch dispute, for which no strong precedent exists. If the political question doctrine is to be employed here, it should be after the development of a record focused on those specific issues.

Yet the events leading here are more squarely a separation of powers question. Time to “resolve the dispute” only exists by virtue of this Court’s order—the executive branch intended to execute Roberson and still has physical custody of him but refuses to produce him. *See id.* at 660 n.14 (“Had the Governor refused to include Article X funding in the special session call—or refused to do so until the Legislature enacted legislation of his choosing—the tension between the branches would be more pronounced, and the burden on the separation of powers more severe”). The only resolution seems to rest with this Court, and there is “no clear precedent on this question; once the question is resolved, future cases would be addressed in light of that resolution.” *In re Texas House of Representatives*, No. 24–0884, at *3.

This matter is within the authority of civil courts—certainly this one

Whether this Court has jurisdiction to act and a remedy it can craft has been raised in prior pleadings in this matter. The answer to both questions is an unambiguous “yes.”

This Court has jurisdiction over this proceeding

Relator cannot improve upon Justice Young’s jurisdictional explanation:

the relief sought here is civil in nature, as are the claims that have been presented. . . . Whether the legislature may use its authority to compel the attendance of witnesses to block the executive branch’s authority to enforce a sentence of death is a question of Texas civil law, not its criminal law.

Id. at *2. Moreover, this Court has jurisdiction over controversies arising from the exercise of a core Article III legislative function, as it did not long ago when the House issued an order for the arrest of absent members and this Court reviewed a district court’s grant of temporary relief enjoining the House from arresting members. *In re Abbott*, 628 S.W.3d at 298.

“[T]his Court has a constitutional obligation to supervise and administer the judicial branch and is responsible for the orderly and efficient administration of justice.” *Shamrock Psychiatric Clinic, P.A. v. Tex. Dept. of Health & Human Servs.*, 540 S.W.3d 553, 560 (Tex. 2018)(citing TEX. CONST. art. V, §§ 3 & 31, TEX. GOV’T CODE § 74.021, & *In re Castillo*, 201 S.W.3d 682, 684 (Tex. 2006)). That includes the obligation to provide all necessary relief to ensure that constitutional prerogatives are not abrogated. *Id.* On top of that

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,

including the Respondent's statutory duty to assist the Committee under Section 301.028, Government Code. TEX. GOV'T CODE § 22.002(c).

Extraordinary relief is appropriate and warranted

This Court is also permitted to take the action sought. It has been suggested that this Court's precedent in *Lane* means it may only constitutionally issue writs of mandamus, which would render it incapable of granting relief here. *Lane v. Ross*, 249 S.W.2d 591, 592 (Tex. 1952). That is incorrect twice over.

First, it overlooks the effect of the 1980 amendment to Section 3, Article V, Texas Constitution, under which the "Texas Constitution now recognizes th[e] fundamental principle" that "[t]his court . . . has inherent power to act to protect and preserve the proper administration of the judicial system" and "shall exercise the judicial power of the State except as otherwise provided in this Constitution." *Vondy v. Cmms. Ct. of Uvalde Cnty.*, 620 S.W.2d 104, 109 (Tex. 1981).

Second, acknowledging that this Court has occasionally referred to *Lane* since the 1980 amendment, it nonetheless remains true then and true now that "[i]n cases in which this court's jurisdiction to issue a writ of mandamus has attached the court necessarily has the correlative authority to issue a writ of injunction to make the writ of mandamus effective." *In re Occidental Chem. Corp.*, 561 S.W.3d 146, 156 (Tex. 2018)(quoting *Lane*, 249 S.W.2d at 592). For mandamus to be available, the dispute must be a matter of law, mandamus must be a "proper or necessary process for enforcement of the right asserted," and there

must be a “strong and special reason for the exercise of . . . extraordinary original jurisdiction’ to resolve ‘questions which are of general public interest and call for a speedy determination.’” *Id.* at 156–58 (quoting *Love v. Wilcox*, 28 S.W.2d 515, 519 (1930)(orig. proceeding). That threshold is easily met: This matter involves disputed constitutional law, its remedy (by the very nature of the subpoena) is the compulsion of government officials, and our separation of powers could not be of greater public interest or urgency.

While the original pleading in this case (hurriedly prepared by necessity given the circumstances) was titled a petition for writ of injunction, the subpoena itself and the pleadings implicate mandamus as well. The substance of Relator’s request has never been solely that Roberson not be executed before he can testify—it has always been that TDCJ comply with the subpoena and provide him for testimony. As this Court observed in another original proceeding scarcely two months ago,

Despite labeling its petition as one seeking an injunction, the [petitioner] has asked us to construe the petition as whatever “writ or request for relief more appropriately applies.” Because the *substance* and not the *form* of the petition is what matters, “incorrect identity of the writ sought is of no significance.” Accordingly, even if we could proceed only if the petition sought mandamus relief, we may treat the petition as seeking that relief.

In re Dallas County, 697 S.W.3d 142, 150 (Tex. 2024). Similar flexibility is sought here if necessary.

Separation of powers is not breached by temporary relief

Relator will not repeat its previous arguments, equally applicable here, that separation of powers is not offended by compliance with the subpoena in this case. See issue one, *supra*. What is of unique concern to this Court is how its role squares with both the executive's control over one of its prisons and its sister court's criminal law jurisdiction.

To begin with, it is plain that this Court's intervention is not an exercise of criminal habeas jurisdiction or clemency. See discussion in Issue 1, *supra*. The trial court's judgment imposing the death penalty on Roberson remains undisturbed, and neither the Court's October 17th order nor subsequent relief requiring compliance with a subpoena can or would release him from that judgment. Roberson's appearance before the Committee would not end his confinement because he will remain in the custody of TDCJ officers during his transportation to, time at, and transportation from the Capitol for his return to death row. See TEX. CODE CRIM. PROC. art. 11.21 (defining constructive custody); see also *id.* art. 11.01 (purpose of writ is release from illegal custody); *Ex parte Cox*, 479 S.W.2d 110, 113 (Tex. App.—Houston [1st Dist.] 1972, no writ)(same). It would likewise not be an “act of grace,” as in clemency, but a temporary order to effectuate its ruling on a constitutional issue. See *Martinez*, 503 S.W.3d at 735–36 (distinguishing clemency from other constitutional power).

Practical examples abound. Imagine a prisoner, whether pending execution or simply incarcerated, who is a necessary witness for a proceeding in this state. May the executive refuse to produce that person for, say, a murder trial?

If the prisoner was a necessary witness or even a party to a civil rights or tort action that required the person to testify, could the executive extinguish that claim by extinguishing the person's life? These issues do not generally and perhaps have not ever come up because cooperation can usually be achieved. *See, e.g., Ex parte Herrera*, 828 S.W.2d 8, 9 (Tex. Crim. App. 1992)(delaying execution where SCOTUS had granted certiorari by four votes but lacked fifth vote required to issue stay). In this case, where that has not happened, this Court's intervention—again, so long as it limited in time and purpose—would resolve the matter without creating a separation of powers problem. In fact, because this Court would be upholding a valid constitutional power of the House, it would be acting to strengthen (not to diminish) a separation of powers that anticipates exactly this kind of overlap. As the Eighth Court observed in *Martinez*,

the judicial branch and the executive branch are able to co-extensively exercise their constitutionally-granted powers over a convicted defendant's case during the same time period without interfering with each other's operations, [and] we see no logical reason to conclude that the legislative branch's exercise of its own unique constitutionally-assigned power . . . would interfere with the operations of the executive branch during this same time period.

Martinez, 503 S.W.3d at 744–45.

As for the intra-branch division of power between this Court and the Court of Criminal Appeals, the relief sought here is also appropriate. That court has held itself “the court of last resort in this state in criminal matters” such that “no other court of this state has authority to overrule or circumvent its decisions, or disobey its mandates.” *State ex rel. Wilson v. Briggs* 351 S.W.2d 892, 894 (Tex. Crim. App. 1961). Yet the extent to which this coequal Court could be bound by

that pronouncement need not even be addressed—no relief from this Court would have the effect of disturbing any ruling because Court of Criminal Appeals has not ruled on the separation of powers issues at play or on the legislative subpoena as such. Those are issues separate and apart from the sentence itself, which will not be undone or indefinitely frozen by this Court.

The Court of Criminal Appeals itself made its mandamus decision against the lower court in this very case by a five-to-four vote. *In re Texas Dep't of Criminal Justice ex rel. Paxton*, No. WR-96,121-01, at *1 (Newell, J., dissenting). But as the dissent observed, the TRO obtained by Relator was not “brought by the defendant to vindicate the defendant’s rights” but by Relator “to vindicate its own authority to subpoena witnesses for testimony before it,” which made the matter “as much a civil matter as a criminal one.” *Id.* at *2–3. Four justices of that court were dubious even of their jurisdiction, observing that they had the “power to issue writs of mandamus [only] when a criminal law is the subject of the litigation.” *Id.* at 3 n.5 (citing *Smith v. Flack*, 728 S.W.2d 784, 788 (Tex. Crim. App. 1987)). In this instance, a criminal law is not the subject of the dispute.

If anything, these blurred lines call for this Court’s clarity, and it is no stranger to doing so with respect to its sister court. An instructive example comes from *In re Dow*, a case about the suspension of an attorney by the Court of Criminal Appeals despite this Court’s exclusive “authority to regulate the practice of law in Texas.” *See generally In re Dow*, 481 S.W.3d 215 (Tex. 2015). Although it ultimately found it could not directly mandamus the Court of Criminal Appeals

(an issue not in play here), this Court considered arguments similar to those that have been advanced against Relator: that the Court of Criminal Appeals had intruded into this Court’s domain, that the incidental effect of its action was akin to exercising this Court’s exclusive authority, and that if left unchecked, it would create “a serious potential for havoc.” *Id.* at 225–26 (internal quotations omitted). This Court found those arguments unavailing and reaffirmed the boundaries within the shared power of our system, as so many authorities cited above have done. *Id.* at 226. It should do so again here.

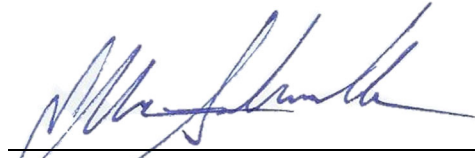
The executive must abide by this court’s decision

It is surely self-evident to this Court that if it rules, the other government entities affected must abide by that ruling. Yet the executive branch has already shown great recalcitrance not only to recognize Relator’s constitutional authority, but to accept the temporary orders that this Court has already issued. This Court must act to cement not only Relator’s role among our branches of government, but its own. In doing so, it would not compromise the separation of powers or system of checks and balances—it would reinforce those principles.

PRAYER FOR RELIEF

Relator asks this Court to prohibit TDCJ from impairing Robert Roberson's compliance with process issued by the Committee, including by his execution, until the earlier of the date that he personally appears before the Committee in the Texas Capitol and gives his testimony or the date the 89th Texas Legislature convenes (January 14, 2025), to compel TDCJ to produce him under any subpoena to fulfill its legal obligation to assist the Committee, and to provide any other equitable relief necessary to ensure compliance with the orders of this Court.

Respectfully,



Jeff Leach

State Bar Number 24067724

Joe Moody

State Bar Number 24055996

Ellic Sahualla

State Bar Number 24057365

Counsel for Relator

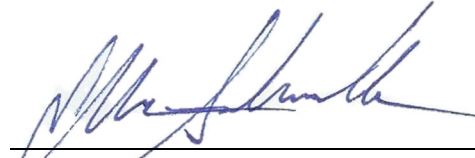
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RULE 52.3(J) CERTIFICATION

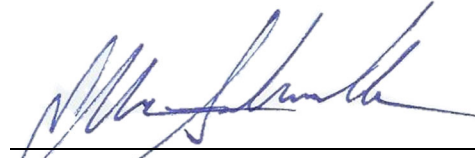
I certify that I have reviewed this document and concluded that every factual statement in it is supported by competent evidence included in the appendix or record.



Ellic Sahualla

CERTIFICATE OF COMPLIANCE

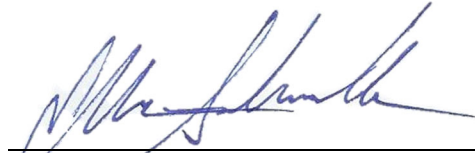
I certify that the parts of this document not excluded under TEX. R. APP. P. 9.4(i)(1) contain a total of 10,655 words according to the word count of the computer program used to prepare the document.



Ellic Sahualla

CERTIFICATE OF SERVICE

I certify that on October 28, 2024, a true and correct copy of this document was served on counsel for the Texas Department of Criminal Justice (Craig W. Cospers, Texas Office of the Attorney General, P.O. Box 12548, Austin, TX 78711, craig.cospers@oag.texas.gov) through the electronic filing manager.



Ellic Sahualla

APPENDIX

Temporary Restraining Order, D-1-GN-24-008489	Tab 1
Reporter’s Record, D-1-GN-24-008489, Oct. 17, 2024	Tab 2
Committee Posting for Oct. 16, 2024	Tab 3
Committee Minutes for Oct. 16, 2024	Tab 4
Declaration of Joe Moody	Tab 5
Legislative Subpoena for Robert Roberson.....	Tab 6
Historical Legislative Subpoena.....	Tab 7

CAUSE NO. D-1-GN-24-008489

The Texas House of Representatives;	§	IN THE DISTRICT COURT
Representative Joe Moody; Chairman of	§	
the Committee on Criminal Jurisprudence	§	
of the House of Representatives of the	§	
State of Texas; and Representative Jeff	§	
Leach,	§	
	§	
Plaintiffs,	§	OF TRAVIS COUNTY, TEXAS
	§	
v.	§	
	§	
Texas Department of Criminal Justice, and	§	
Texas Department of Criminal Justice	§	
Correctional Institutions Division,	§	
	§	
Defendants.	§	53rd JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER

Plaintiffs The Texas House of Representatives; Representative Joe Moody; Chairman of the Committee on Criminal Jurisprudence of the House of Representatives of the State of Texas; and Representative Jeff Leach (collectively, “Plaintiffs”), filed an Original Petition and Application for Temporary Restraining Order (the “Application”) against Defendants Texas Department of Criminal Justice and Texas Department of Criminal Justice Correctional Institutions Division (collectively, “Defendants”). After considering the pleadings, the evidence presented, and the arguments of counsel, the Court finds that notice of the Application was proper and that Plaintiffs’ Application should be granted for the reasons set out below.

It clearly appears from the facts set forth in the Application that Plaintiffs are likely to succeed on the merits of their claims against TDCJ. Plaintiffs have shown that the Committee¹ lawfully executed a Subpoena and Writ of Attachment, as authorized by Section 301.024 of the Texas Government Code, to procure Robert Roberson’s testimony in its ongoing investigation into

¹ Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Application.

criminal procedure and Article 11.073. Section 301.028 allows the Committee to request assistance from any government office, department, or agency and requires that the department “shall” provide the necessary assistance.

If Defendants are not immediately restrained from the acts listed below, there is a substantial threat that Plaintiffs will suffer imminent and irreparable injury while this case is pending. Defendants have not affirmatively assured that it will assist the Committee, as it is required to do under Section 301.028. If Defendants follow through with executing Mr. Roberson on October 17, it will forever deprive the Committee from hearing Mr. Roberson’s valuable and relevant testimony to which it is entitled.

In addition, Plaintiffs have shown that monetary damages would not adequately compensate Plaintiffs if Mr. Roberson is executed before testifying. His testimony is extremely valuable to the Committee and the Texas public as it will further the Committee and Legislature’s policies of ensuring fair and just administration and execution of laws within their jurisdiction, which has no monetary value. It is therefore:

ORDERED that Defendants Texas Department of Criminal Justice and Texas Department of Criminal Justice Correctional Institutions Division, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this Order, are hereby commanded forthwith to desist and refrain from impairing Robert Roberson’s compliance with the Subpoena and Writ of Attachment, or any related subpoenas and writs, by executing him or by any other action. It is further

ORDERED that Defendants Texas Department of Criminal Justice and Texas Department of Criminal Justice Correctional Institutions Division, their officers, agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of


this Order, are hereby commanded to comply with the Subpoena and Writ of Attachment by presenting Robert Roberson to testify before the Committee on the date and time stated in the Subpoena and Writ. It is further

ORDERED that this Temporary Restraining Order shall be valid for fourteen days from its issuance, and that the hearing on Plaintiffs' application for a temporary injunction is set for October 31, 2024, at 9:00 a.m. at the Travis County Civil and Family Courts Facility, 1700 Guadalupe St., Austin, TX 78701. The purpose of the hearing shall be to determine whether this Temporary Restraining Order should be made a temporary injunction pending a full trial on the merits. It is further

ORDERED that the Clerk shall forthwith issue a Temporary Restraining Order in conformity with the law and the terms of this Order. The Clerk shall deliver the Temporary Restraining Order and Writ of Injunction to any authorized process server who, by this Order, is authorized pursuant to Rules 103 and 689, Texas Rules of Civil Procedure, to serve citation, notices and other processes in the above styled and numbered cause. It is further

ORDERED that the issuance of bond is waived.

SIGNED on October 17, 2024 at 5:30 p.m.



JUDGE PRESIDING
JESSICA MANGRUM

REPORTER'S RECORD
CAUSE NO. D-1-GN-24-008489

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THE TEXAS HOUSE OF)	IN THE DISTRICT COURT
REPRESENTATIVES,)	
REPRESENTATIVE JOE MOODY,)	
CHAIRMAN OF THE COMMITTEE)	
ON CRIMINAL JURISPRUDENCE)	
OF THE HOUSE OF REPRESENTATIVES))	
OF THE STATE OF TEXAS;)	
AND REPRESENTATIVE JEFF LEACH,)	
Plaintiffs,)	
)	
v.)	OF TRAVIS COUNTY, TEXAS
)	
TEXAS DEPARTMENT OF CRIMINAL)	
JUSTICE, AND TEXAS DEPARTMENT)	
OF CRIMINAL JUSTICE)	
CORRECTIONAL INSTITUTIONS)	
DIVISION,)	
Defendants.)	53RD JUDICIAL DISTRICT

EMERGENCY HEARING
(VIA ZOOM VIDEOCONFERENCE)

On the 17th day of October, 2024, the following proceedings came on to be held in the above-titled and numbered cause before the Honorable Jessica Mangrum, Judge Presiding, held in Austin, Travis County, Texas.

Proceedings reported in computerized machine shorthand by a Texas Certified Shorthand Reporter, Certification Number 7076.

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I N D E X
EMERGENCY HEARING
THURSDAY, OCTOBER 17, 2024

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P R O C E E D I N G S

THURSDAY, OCTOBER 17, 2024

(4:15 p.m.)

JUDICIAL EXECUTIVE ASSISTANT: The 200th District Court of Travis County is now in session, the Honorable Jessica Mangrum presiding.

THE COURT: Good afternoon, everyone. Welcome to the 200th District Court. I don't have a cause number because the filing hasn't been accepted, but we're here in the Texas House of Representatives, Representative Moody, Chairman of the House Committee on Criminal Jurisprudence; and Representative Jeff Leach versus TDCJ and the Texas Department of Criminal Justice Correctional Institutions Division.

Who wants to introduce the folks that are going to be participating?

ANNOUNCEMENTS

MR. LEACH: Your Honor, I'll do so for the Plaintiffs.

I'm State Representative Jeff Leach, Chairman of the House Judiciary Committee, and I believe that Chairman Joe Moody is on this Zoom, as well. And then, Former Supreme Court Justice Dale Wainwright is present for the Plaintiffs, as well.

THE COURT: All right.

1 And is someone here from the Attorney
2 General's Office?

3 MR. MARSHALL: Your Honor, this is Ed
4 Marshall. We haven't been served with the pleading, and
5 I have no idea what this is about.

6 THE COURT: Okay. I think I was under the
7 impression or understanding that it had been shared.

8 MR. MARSHALL: No, it has not, Your Honor.

9 THE COURT: Okay.

10 Let's see. Mr. Leach or Mr. Wainwright,
11 do you have someone who can make sure that that gets
12 transmitted?

13 MR. LEACH: Yes. It's my understanding
14 that the Attorney General's Office has been well aware
15 of this issue all day and knew this pleading was coming.
16 And, of course, it was just filed within the last I
17 think 15 to 20 minutes, and so we're happy to share that
18 with the Attorney General's Office.

19 If they want to include the email address
20 in the chat of the Zoom, Your Honor, if that would be
21 acceptable to you, then we could get that over to them
22 immediately.

23 THE COURT: That's fine.

24 Mr. Marshall, do you want to go ahead and
25 do that?

1 MR. MARSHALL: Yes, Judge.

2 (Brief pause)

3 MR. LEACH: I'm sorry. I didn't hear the
4 question.

5 THE COURT: Oh, Mr. Marshall is going to
6 put his email in the chat for you to copy and paste and
7 send him the Application.

8 MR. MARSHALL: Your Honor, it looks like
9 the chat is disabled.

10 THE COURT: Ah. Why don't you just call
11 out your email, Mr. Marshall?

12 MR. MARSHALL: Okay. It's pretty simple.
13 It is edward.marshall@oag.texas.gov.

14 THE COURT: Thank you.

15 All right. So, I have had an opportunity
16 to review the Petition and the Application. Who wants
17 to speak to or lay out the request, Mr. Leach or
18 Mr. Moody?

19 MR. LEACH: So, Your Honor, we, of course,
20 want to allow the Attorney General's Office time to --
21 to review the pleading. If you'd like us to go ahead,
22 we can lay a factual and foundational predicate for the
23 pleading. It's -- I think the Attorney General's Office
24 has been aware of what's in it. We'll go through it as
25 succinctly as we can.

1 I'm going to defer to Chairman Moody on
2 the generals, and then, I'll follow up with some
3 specific remedies that we're requesting of the Court.

4 THE COURT: All right.

5 Go ahead, Mr. Moody.

6 MR. MOODY: Good afternoon, Judge, and
7 thank you for having us. Joe Moody, Plaintiff in the
8 matter. I also serve as State Representative, Texas
9 House of Representatives, and am currently appointed to
10 serve as the Chair of the Criminal Jurisprudence
11 Committee.

12 The Criminal Jurisprudence Committee
13 has jurisdiction over criminal procedure, penal code,
14 punishments, things related to prosecution, and the
15 criminal courts that intersect with that subject matter.
16 The oversight that we are given is pursuant to our
17 constitutional authority to draft House Rules under
18 Article 3, Section 11 of the Texas Constitution.
19 That's who the Committee is. That is what we do. We
20 engage in fact finding, investigation, understanding
21 what -- how these things work together.

22 The Committee is comprised of nine
23 members -- five Republicans, four Democrats -- and
24 yesterday we held a hearing at the Texas Capitol to
25 specifically discuss Article 11.073 of the Code of

1 Criminal Procedure, which is within our jurisdiction.
2 This is what's colloquially known as the junk science
3 writ or new science writ. This is a provision that's
4 been in the Code for 10 years, and it is implicated --
5 it's implicated in the -- in Robert Roberson's case,
6 which is a case, obviously, that's become very well
7 known in the last several weeks.

8 Mr. Roberson is an autistic man, who is
9 facing execution in less than two hours from now. He
10 has availed himself of utilization of the new science
11 writ. And we want to explore what was happening in that
12 case, how our statute was being utilized, whether we
13 thought it was being utilized properly or as the
14 Legislature intended, if there was some drafting issues
15 with it, or if there's something that was missing
16 because, what we had expected to happen with the
17 legislative intent of that statute, we don't believe was
18 happening in Mr. Roberson's case and in other cases.
19 And so that was the purpose of the Committee hearing
20 yesterday, to glean that evidence.

21 We heard evidence from the prosecutor in
22 Mr. Roberson's case, the defense attorney in
23 Mr. Roberson's case, from four expert witnesses, two of
24 which had re-evaluated much of the -- the entirety of
25 the medical record in the case. We also heard from

1 legal experts about the article itself and the efficacy
2 of having new science writs and the purpose they serve
3 in our criminal justice system to make sure that we
4 don't make mistakes when new evidence comes forward
5 later after a conviction or maybe there was new evidence
6 that comes out later where it could contradict what was
7 utilized at the trial stage. That's kind of -- that is
8 what we are delving into.

9 At the end of taking invited testimony
10 yesterday, Representative Harrison and Representative
11 Leach made a motion, which is within our Rules and
12 within our statutory authority, made a motion to issue a
13 Subpoena for Robert Roberson. That motion was then
14 voted upon by the Committee. There were seven members
15 present at the time of the vote, and that vote was
16 unanimous to issue a Subpoena.

17 That Subpoena was issued, was served upon
18 Mr. Roberson's attorney, Gretchen Sween. The TDCJ was
19 made aware of it, contemporaneously, that she had
20 accepted service on his behalf. He was made aware of
21 it, as well, through communication through TDCJ. And
22 the reason the Committee took that action and the
23 legislative purpose behind it is that for us to
24 understand -- and Mr. Roberson is in a unique situation,
25 to understand this particular Code of Criminal Procedure

1 provision.

2 He is an autistic man who can talk through
3 with the Committee the investigation that he went
4 through, the prosecution, and the appellate process and
5 whether and to what extent he felt there was due process
6 or how his rights were respected or not respected in
7 that process. He is uniquely situated to be able to
8 give this information to the Committee, which is within
9 its jurisdiction. We have statutory authority to issue
10 these Subpoenas; we issued in this case.

11 Obviously, this is a unique circumstance
12 in that we can only post notice for a hearing five days
13 out in advance. We have done that. There is the
14 hearing that has been posted for Monday the 21st at
15 noon, and we have -- the Subpoena is issued for
16 Mr. Roberson to appear there. We've also issued a Writ
17 of Attachment tied to that Subpoena exercising our
18 authority to investigate fully this topic.

19 We also know that to be able to
20 understand -- there were a lot of fact issues at play in
21 this particular case. And to understand that, to be
22 able to get to the root of it, we do have to be able to
23 judge his credibility, and we cannot do that without
24 speaking to him. And that is the urgency of this -- of
25 this Petition and the relief that we're seeking. That

1 is the posture that we're in today.

2 And I'm going to -- I'm going to defer to
3 Mr. Leach on the rest of the -- the rest of the request
4 that we are seeking.

5 THE COURT: Okay.

6 Go ahead.

7 MR. LEACH: Thank you, Your Honor. Can
8 you hear me okay?

9 THE COURT: I can.

10 MR. LEACH: Okay.

11 Chairman Moody did a great job of covering
12 the factual background and the predicate for our relief
13 today. And, without question, Your Honor, this is --
14 this is an extraordinary remedy that the Legislature is
15 seeking, but it's not -- it's not undue. The
16 Legislature is allowed this constitutional authority
17 pursuant to the power given to the Legislature under the
18 Texas Constitution and our House Rules.

19 We, as Chairman Moody, voted unanimously
20 in our Criminal Jurisprudence Committee last night to
21 subpoena Mr. Roberson. At our hearing next week, as
22 Chairman Moody noted, we believe that his testimony is
23 not only -- is not only helpful for the Committee and
24 the Legislature, but it's vitally necessary. It's our
25 understanding, based on the research that we've done now

1 for many weeks, that his case would be the first case
2 not only in the State of Texas but nationally for any
3 individual to be executed pursuant to the shaken baby
4 syndrome, which the testimony strongly indicated
5 yesterday is now largely -- largely debunked and
6 disproven.

7 The Legislature has certain interests, and
8 I would say the State of Texas has a strong interest in
9 ensuring that our laws are followed, especially our
10 criminal laws and our criminal laws relating to someone
11 that's likely to be -- or that's scheduled for execution
12 right now in 93 minutes, is certainly -- that the State
13 has a strong interest in ensuring that that does not
14 happen so that we can hear his testimony and judge his
15 credibility. And the Legislature intends to hold a
16 hearing to do just that next week.

17 And so, as Mr. Moody indicated, and as the
18 Committee unanimously voted -- and I would add as one
19 final vote that over 80 Legislators, the State
20 Representatives, have signed onto a letter calling for
21 the pause button in Mr. Roberson's execution, which is
22 scheduled 93 minutes from now. The Legislature believes
23 that his testimony is not only helpful but is vitally
24 necessary. And, therefore, we're asking for this remedy
25 from the Court to push the pause button on his execution

1 so that testimony can be offered in front of the Texas
2 House and so that we can get the testimony that we need
3 from Mr. Roberson.

4 THE COURT: Okay. Thank you.

5 And if there's nothing else, we'll go
6 ahead and turn it over to Mr. Marshall at this time.

7 MR. MARSHALL: Judge Mangrum, I'd just
8 like to begin by noting that this is not a shaken baby
9 case. The inmate in this case was not indicted for
10 shaking a baby. He was indicted for a blunt force
11 trauma murder of a 2-year-old. The evidence supports
12 the fact there were multiple blunt force impacts to the
13 child's head, and there was a history of abuse from this
14 particular inmate against this child. Shaken baby
15 syndrome just doesn't play a role in this case.

16 So, whether or not it's been discredited
17 in the community of pediatric specialists, it's just not
18 the central feature of this case. But, more
19 importantly, the Court of Criminal Appeals has exclusive
20 jurisdiction here. They have denied relief and a stay
21 of execution four times at least in the last six weeks.
22 Mr. Roberson had a lengthy evidentiary hearing in 2021,
23 at which he was afforded an opportunity to present all
24 of this evidence. It was found to be lacking by the
25 Trial Court and Court of Criminal Appeals, and that

1 Court's mandate controls here.

2 This Court now has a ministerial duty to
3 refrain from acting without jurisdiction, and that is a
4 ministerial duty that is mandamus law in the Court of
5 Criminal Appeals, Your Honor.

6 THE COURT: Okay.

7 (Simultaneous discussion)

8 MR. LEACH: Your Honor --

9 THE COURT: I'm not used to my appeals
10 going to the Court of Criminal Appeals, but I'll -- let
11 me ask you this, Mr. Marshall: Is the Subpoena sent by
12 the Legislature a valid, legal Subpoena?

13 MR. MARSHALL: Yes, Your Honor, as far as
14 I can tell.

15 THE COURT: Okay.

16 All right. Mr. Leach, I think I might
17 have interrupted. Was there something you wanted to
18 add?

19 MR. LEACH: No, Your Honor. You're not
20 interrupting me at all. I hope I didn't -- I hope I
21 didn't do likewise.

22 I did just want to respond quickly to what
23 seems to be the main position of the Attorney General's
24 Office and, therefore, TDCJ, their client here, in
25 responding to our motion in that this is not a shaken

1 baby case; that seems to be the premise and the
2 foundational argument that they're relying on. When the
3 testimony yesterday that was offered to this Committee,
4 the appellate record, the evidentiary record is full and
5 replete of information to the contrary, that this was,
6 in fact, primarily and foundationally and most
7 importantly a shaken baby case. The lead detective, who
8 led this case, who now regrets having anything to do
9 with this case, and other testimony would lead the Court
10 to believe and the Fact Finder to believe that this was
11 in and of itself a shaken baby case and nothing more.

12 MR. MOODY: Judge, if I -- just briefly,
13 I --

14 THE COURT: Yes, go ahead.

15 MR. MOODY: -- I just want to add a couple
16 of things.

17 Over -- and Mr. Marshall is correct.
18 There's been an enormous amount of evidence that's been
19 presented. Yesterday we took over eight hours of
20 testimony about this particular case. There are a lot
21 of issues to unpack in this case, but they're not --
22 they're not the central issue in this Court today.

23 The central issue in this Court today is
24 the Legislature has authority to issue a Subpoena to be
25 able to do its job. Our job in this Committee has to do

1 with understanding the law that's within its
2 jurisdiction, which includes Article 11.073. The record
3 was very clear yesterday that a different standard than
4 what is mandated by the Legislature in the black letter
5 of the law is being utilized in the Courts. That is
6 inappropriate; that is improper, and if that is the
7 case, it is absolutely within the Legislature's
8 jurisdiction and within our power to be able to look
9 into that. And that is the crux of why we need
10 Mr. Roberson to testify.

11 And no agency, with respect to TDCJ, can
12 stand in the way of a legitimate Subpoena that's been
13 issued by the Legislature in furtherance of a legitimate
14 legislative purpose, and that's what we have here.
15 People are going to argue about Mr. Roberson's case long
16 after today and what happened and what didn't happen.
17 Science -- the experts argued about it for weeks, but
18 the issue today is, does the Legislature have the
19 authority to call a witness under a legitimate
20 legislative purpose before it and whether or not an
21 agency can simply ignore that legally-issued Subpoena.

22 THE COURT: Okay. Understood.

23 All right. And let me -- I'm looking back
24 at the Application, Counsel, and the relief that has
25 been requested.

1 (Brief pause)

2 THE COURT: Okay.

3 All right. I don't have anything else for
4 you, Counsel.

5 **COURT'S RULING**

6 THE COURT: Based on what I've heard this
7 afternoon, the Court will grant the TRO. If you could
8 submit an order -- I don't think I saw one -- send that
9 over to our office, we'll get it signed.

10 MR. MARSHALL: Judge, if I may ask, we
11 would like a copy of the signed TRO as quickly as
12 possible in order for us to seek our remedies in the
13 Court of Criminal Appeals.

14 THE COURT: Okay. And do we have your
15 email -- let me -- oh, I do because it's a part of the
16 record, Mr. Marshall. So, you will be getting that
17 whenever it's sent out to the parties.

18 MR. MARSHALL: Okay. Thank you, Judge.

19 THE COURT: All right.

20 MR. LEACH: Thank you, Judge.

21 MR. MOODY: Thank you, Your Honor.

22 THE COURT: Thanks for your time. You're
23 excused from the virtual courtroom.

24 (Proceedings adjourned: 4:34 p.m.)

25

REPORTER'S CERTIFICATE

STATE OF TEXAS)

COUNTY OF TRAVIS)

I, Janis Simon, Official Court Reporter in and for the 200th District Court of Travis, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record in the above-styled and numbered cause, all of which occurred via videoconference, in open court, or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, offered by the respective parties.

WITNESS MY OFFICIAL HAND this 20th day of October, 2024.

/s/ Janis Simon

Janis Simon, CSR
Texas CSR 7076
Expires: 07/31/2026
Official Court Reporter
200th District Court
Travis County, Texas
P.O. Box 1748
Austin, Texas 78767
Telephone: (512) 854-9325

HOUSE OF REPRESENTATIVES
NOTICE OF PUBLIC HEARING

COMMITTEE: Criminal Jurisprudence
TIME & DATE: 10:00 AM, Wednesday, October 16, 2024
PLACE: E2.016
CHAIR: Rep. Joe Moody

The Committee on Criminal Jurisprudence will hear invited testimony only on the following:

Criminal procedure related to capital punishment and new science writs under Article 11.073, Code of Criminal Procedure.

Electronic public comments may be submitted for:

Criminal Procedure Article 11.073

For those persons who will be testifying, information for in-person witness registration, can be found here:

<https://mytxlegis.capitol.texas.gov/HWRSPublic/About.aspx>

A live video broadcast of this hearing will be available here:

<https://house.texas.gov/video-audio/>

Instructions related to public access to the meeting location are available here: <https://house.texas.gov/committees/public-access-house-committee-meetings/>

Texas residents who wish to electronically submit comments related to agenda items on this notice without testifying in person can do so until the hearing is adjourned by visiting:

<https://comments.house.texas.gov/home?c=c220>

NOTICE OF ASSISTANCE AT PUBLIC MEETINGS

Persons with disabilities who plan to attend this meeting and who may need assistance, such as a sign language interpreter, are requested to contact Stacey Nicchio at (512) 463-0850, 72 hours prior to the meeting so that appropriate arrangements can be made.

The House Committee on Criminal Jurisprudence

88th Legislature
October 16, 2024
10:00 a.m.
E2.016

CORRECTED MINUTES

On October 21, 2024, the House Committee on Criminal Jurisprudence authorized the correction of the minutes for the meeting of the House Committee on Criminal Jurisprudence held on October 16, 2024. The following are the corrected minutes for that meeting:

Pursuant to a notice posted on October 11, 2024, the House Committee on Criminal Jurisprudence met in a public hearing and was called to order by the chair, Representative Moody, at 10:15 a.m.

The initial quorum call was answered as follows: Representatives Moody; Cook; Darby; Harrison; Leach; Morales, Christina; and Schatzline.

A quorum was present.

House Committee on Criminal Jurisprudence

10/16/2024

The Chair made opening remarks.

The Committee heard testimony on Criminal Procedure Article 11.073.

Testimony taken/registration recorded. (See attached witness list.)

(Representative Bowers now present.)

Testimony taken/registration recorded. (See attached witness list.)

(Representative Cook in chair.)

Testimony taken/registration recorded. (See attached witness list.)

(Representative Moody in chair.)

Testimony taken/registration recorded. (See attached witness list.)

(Representative Cook in chair.)

Testimony taken/registration recorded. (See attached witness list.)

(Representative Moody in chair.)

Testimony taken/registration recorded. (See attached witness list.)

At 2:43 PM the Committee stood at ease.

The Chair called the Committee back to order at 4:00 PM.

House Committee on Criminal Jurisprudence

10/16/2024

Testimony taken/registration recorded. (See attached witness list.)

Representative Harrison moved to grant the chair all necessary authority under Rule 4, Section 21(a), and Section 301.024(a), Government Code to:

- Issue and obtain compliance with process issued to Robert Roberson to provide all relevant testimony and information concerning the committee’s inquiry into relevant criminal procedure matters posted by the committee for today and future hearings; and
- appoint, on the committee’s behalf a sergeant-at-arms or an agent to serve the authorized process.

Representative Leach seconded the motion.

The motion prevailed by the following record vote:

Ayes: Representatives Moody; Cook; Bowers; Darby; Harrison; Leach; Schatzline (7).

Nays: None (0).

Present, Not Voting: None (0).

Absent: Representatives Bhojani; Morales, Christina (2).

Chair Moody , on behalf of the committee, appointed Ellic Sahualla as a Sergeant at Arms to serve the process.

House Committee on Criminal Jurisprudence

10/16/2024

At 6:24 p.m., on the motion of Representative Moody and without objection, the meeting was adjourned subject to the call of the chair.

Rep. Moody, Chair

Rachel Wetsel, Clerk

DECLARATION OF JOE MOODY

My name is Joe Moody, my date of birth is [REDACTED], and my address is [REDACTED]. I declare under penalty of perjury that the following is true and correct:

I'm a state representative and currently serve as the chair of the Committee on Criminal Jurisprudence of the Texas House of Representatives. I've read the statement of facts in the Relator's Brief on the Merits that this declaration is appended to. I reviewed it in detail as it was prepared and made changes where I felt minor details were not 100% verifiably correct or didn't tell the whole story. I have personal knowledge of every fact in that statement and would swear to it all unequivocally if called as a witness in any proceeding.

I base that on my memory of the events of the last couple of weeks and also detailed, contemporaneous notes, which I've included below. I also want to provide some context for the decisions our committee made.

The *idea* of a subpoena for Robert Roberson had been floated days before our hearing, but my initial reaction was that it was unnecessary and raised some of the very issues we're dealing with now. My view was that I'd only even consider it if there was a clear legislative purpose that truly compelled our committee to secure his testimony.

In fact, I remember mentioning the subpoena concept and working through those issues with my chief of staff, general counsel, and policy director of the committee—Ellic Sahualla—on the evening of the 15th as we prepared for the hearing. We both shared the same concerns and reluctance. As I told him that night, and this remained true even as I called the hearing to order the next day on the 16th, I did not intend to recognize anyone for a motion to authorize a subpoena based on where things stood then.

What changed my position (and I believe that of other committee members) was hearing the testimony of the witnesses and reviewing the materials they provided. The decision happened organically from there. We were especially moved by lead investigator Brian Wharton, who told us that he played a large role in putting what he now believed was an innocent man on death row because, he told us, "I was wrong. I didn't see Robert. I did not hear Robert."

Those words struck all of us. When we also heard about the ways Robert's autism played into the original trial and the postconviction matters, including the Article 11.073 proceedings the hearing was focused on, there was a collective recognition that we simply couldn't make the same mistake and had to get Robert's testimony before the committee. We believed that his perspective would be unique as a person with autism under a death sentence in a "shaken baby

syndrome” case who had dealt with a detailed 11.073 claim (which didn’t go as we would’ve expected). Given some of the dispute around the facts of the case, we also believed it was essential to judge his credibility as a witness.

It wasn’t a decision we made lightly. We knew it was unprecedented and would be seen by some as an improper intervention, even if it was a short delay. (In the heat of it, I don’t think anyone involved realized it would effect a 90-day delay. We all believed that we would hear his testimony five days later and that he might leave our committee for the execution chamber.)

We also had great respect for the separation of powers issues involved. As soon as the idea was discussed, I began to think through the appropriate role of the House and the implications of the subpoena. Ellic began, on his own initiative, to research the constitutional issues involved to make sure that a subpoena was consistent with both the letter and spirit of my oath as legislator and the rights and duties of the House. We discussed all this at length and concluded that while a subpoena had never been used in this way before, it was constitutionally permissible and furthered a legitimate legislative purpose.

On that point, we were well aware that it would have the side effect of delaying the execution. We discussed that and were committed to never pursuing that for its own end, and other members felt that same way. While some of us oppose the death penalty generally and others believe it isn’t appropriate in this case at this time, we all agreed that a subpoena could only be used for a legitimate legislative purpose. That’s why we set the hearing for the soonest date allowed under our House rules, believing at the time that any hearing would be recording what were essentially Robert’s last words.

Our goal was, again, to see him and to hear him, and to provide that record and perspective to the 89th Legislature as we considered legislation that would keep anyone else from hitting the same procedural roadblocks that Robert did.

I should note that service of process was simple: I went with Ellic, who I’d designated the committee’s sergeant-at-arms, and Robert’s attorney, Gretchen Sween, to the House Clerk’s Office to have the subpoena attested. I signed it and each of them signed it. It’s long been the custom of the House to allow an attorney to accept service on behalf of their client.

Since that decision, which I stand by, I’ve been disappointed by the way our government has functioned. I don’t think we should be in the business of fighting for fighting’s sake—we work best when we work together for the people of Texas. I’m also incredulous that a subpoena and a *Texas Supreme Court order* can simply be ignored. I and other members of the House have explored every conceivable avenue to settle matters fairly and diplomatically.

The irony is that, had we reached an accommodation last week, Robert might already be under a death warrant again now. Our intention was never to prevent that—it's not our role—but merely to make sure that we have the benefit of his own words to guide our decision-making. And now, of course, we're forced into standing up for the constitutional authority of the House, an institution we've all dedicated so much of our lives to.

I'm proud of Texas, and even as a member of the minority party, I'm often proud of Texas government. But I'm not proud of how things have unfolded here. We shouldn't be in court over whether the legislature can hear from someone because the people's business should never be done in the dark. I still hope we can sort this out and learn what Robert can tell us.

Here are my notes about all this. Some were jotted down as these events unfolded, and others were made as I thought through recent events and wrote down what happened for clarity.

All times are approximate

Thursday 10/17/24

10:45pm CST

After the stay was issued by SCOTX, I received a call from Rep. John Bucy who was in Huntsville to be a witness for the execution. He put me on the phone with Bobby Lumpkin and Jason Clark from TDCJ. At that time, Lumpkin and Clark informed me that they have videoconference capability if I would like to utilize it for taking Robert's testimony. They stated that they would bring Robert in person if that's what I would prefer. I informed them that in person would be necessary, and they confirmed that was fine with them and they would "do whatever I want." They referred to a logistics call that was happening the following morning. They said they would give Rep. Bucy their contact information so that I could communicate with them directly if need be. That information was forwarded to me by Rep. Bucy.

Friday 10/18/24

9:30am MST

Logistical meeting via Zoom held. I took this meeting immediately after landing at El Paso International Airport. The meeting lasted a little over one hour. We discussed: Robert's transport, entry into the building once Robert arrived, layout of the committee room so that it was a safe environment, DPS deployment in both uniformed and non-uniformed troopers, Robert's ability to wear civilian clothes for his testimony (it was conveyed that they intended to buy him clothes), Robert's autism as it related to a new environment along with related

accommodations, when in the order of witnesses he would testify, setting up the adjoining committee room as a holding area after Robert's arrival, and media accessibility.

10:40am MST

Logistical team from Zoom meeting looped together in an email for planning purposes.

12:12pm MST

Issue related to TDCJ transport vehicle height and entry into the Capitol resolved. Entry into the building was now firm between TDCJ and DPS.

3:06pm MST

Committee room mockup drawing sent to me for approval by House Administration. The mockup was based off of the discussion in the logistical call regarding safety and security. It had been approved by DPS.

3:07pm MST

I was informed via House staff that representatives from the Executive Branch had instructed TDCJ that Robert's testimony was to be taken via videoconference and that in person would not be allowed.

7:51pm MST

Email from Kim Gdula at the AG's office that stated Robert's testimony would only be provided via videoconference. A formal letter was attached to this email. The email also directed me not to communicate with anyone directly at TDCJ any further. I did not see this email until the following morning.

Saturday 10/19/24

8:56pm MST

I replied to Kim Gdula with a series of questions about how they proposed to handle several issues related to taking Robert's testimony virtually.

10:23pm MST

Gretchen Sween, Robert's attorney, sent me formal communication objecting to him testifying virtually. She laid out a number of concerns, not the least of which was his autism.

Sunday 10/20/24

8:48am MST

Kim Gdula responded to my questions from the previous day.

11:55am MST

I responded to Kim Gdula letting her know that I had received her answers. I also informed her that I had received communication from Robert's attorney about her objection to Robert testifying virtually. I informed her further that I was going to weigh these options based on the information provided, since it is solely within the authority of the Chairman of a Committee to permit virtual testimony.

Monday 10/21/24

Between 7am and 8am CST

Email from Kim Gdula asking for a follow up to my email from the prior day.

8am CST

Meeting with House staff where I proposed to take the committee to Robert's location and take his testimony there, addressing both the safety concerns listed by Kim Gdula and the issues raised by Robert's lawyer.

9:05am CST

Phone call to Kim Gdula. Expressed my concerns about virtual testimony. I stated that my expectation was that they did not intend to produce Robert in person for the hearing, and that I cannot permit virtual testimony. To that end, I expressed my earnest desire to find a mutually acceptable accommodation and proposed the committee traveling to take Robert's testimony in person at the place of his incarceration (or another location if TDCJ preferred). I told her that I intended to send her an email to that effect as soon as we got off the phone. She asked to include as much detail as I could about the proposal, and that she would have to discuss it with her client and get back to me. My staff provided Kim Gdula with my personal cell phone number so that she could reach me at any time to discuss the matter further.

9:08am CST

Email sent to Kim Gdula proposing the in person testimony of Robert at a secure facility of TDCJ's choosing.

10am CST

House staff informed me that representatives from the Executive Branch had outlined permissible options to move forward. One of those permissible options was for the committee to travel to Robert and take audio only testimony. Audio only testimony comports with House practice for traveling committees. I discussed all of the permissible options that had been outlined with Rep. Leach, Rep. Harrison, Rep. Hull and Rep. Bucy.

12:36pm CST

Committee hearing begins, and I explained that I could not permit Robert to testify virtually due to a number of factors. I also informed the public that collaborative conversations were ongoing to discuss other options to be able to obtain Robert's testimony in person.

8:33pm CST

Meeting to discuss resolution confirmed for the following morning with representatives from the Executive Branch, House staff and Reps. Moody, Leach, Harrison, Hull and Bucy.

9:46pm CST

Prior to standing the committee at ease, I publicly stated that visiting Robert in person at his place of his incarceration for purposes of taking his testimony was being discussed. Throughout the day, while conversations continued with representatives of the Executive Branch about working through the issues of obtaining Robert's testimony, I never received a reply email or a phone call from Kim Gdula in response to my email from that morning laying out our proposal to take the committee to Robert. That communication had been made 12 hours prior to the committee standing at ease.

Tuesday 10/22/24

8am CST

An in person meeting was held with representatives from the Executive Branch, House staff as well as Reps. Leach, Harrison, Hull and Bucy. During a meeting that lasted over an hour, options were discussed on how to move forward with Robert's testimony. Again, the concept of an in person interview by the committee was discussed. The House members agreed to an audio only interview of Robert during this meeting as it would satisfy our subpoena and committee prerogative.

2:22pm CST

House Committee on Criminal Jurisprudence formally adjourned. Prior to the adjournment, I commented on the productive conversations we were having to obtain Robert's testimony. I also stated that we fully intend on taking Robert's testimony and that we were working out the details.

4:09pm MST

While on a flight back to El Paso, I was informed by House staff that representatives from the Executive Branch would no longer permit the committee to travel to take Robert's testimony. My response was one of surprise, since less than 24 hours prior that option was permissible and we had accepted it as something that complied with our subpoena in a meeting that very morning.

5:44pm MST

I was informed that meeting would be held again between House staff and representatives from the Executive Branch regarding the in person, audio only hearing. The day ends with still no response to my email to Kim Gdula at that AG's office regarding the taking of Robert's testimony at a secure facility. Two days have now passed with no communication from her.

Wednesday 10/23/24

12pm MST

House staff informs me and Rep. Leach that an in person, audio only committee hearing for the purposes of taking Robert's testimony at a secure facility will not be permitted.

5pm MST

The Attorney General publishes on his taxpayer funded website an article entitled: "Office of the Attorney General Sets the Record Straight About Nikki Curtis's Death, Rebutting Jeff Leach's and Joe Moody's Lies About Convicted Child Murderer."

Thursday 10/24/24

6pm MST

Reps. Moody, Leach, Hull and Bowers publish a 16-page rebuttal to the AG's article.

Friday 10/25/24

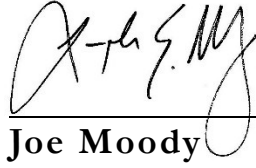
1:04 MST

Due to Kim Gdula being completely unresponsive regarding my request that the committee be permitted to meet with Robert in person to take his testimony since Monday morning, I emailed her to ask for her response to the proposal. I went so far as to offer the option for the committee to appoint a smaller subcommittee for the same purpose if that would be acceptable. I asked for a response to these offers by close of business.

5:02pm MST

I received a reply from Kim Gdula which was non-responsive to my offers. She stated in part that our subpoena had expired and that the committee had adjourned. At no time in the entirety of our communications did the AG's office ever entertain or respond to our proposed accommodations. To this day, I do not know if any of our alternate proposals are acceptable to the AG's office since they simply don't engage.

Executed in El Paso County, State of Texas, on October 28, 2024.

A handwritten signature in black ink, appearing to read "Joe Moody". The signature is written in a cursive style with a large initial "J" and "M".

Joe Moody

Declarant

STATE OF TEXAS
HOUSE OF REPRESENTATIVES

SUBPOENA

To the Sergeant-at-Arms of the House of Representatives of the State of Texas, the sergeant-at-arms or authorized agent of the Committee on Criminal Jurisprudence of the House of Representatives of the State of Texas, or any peace officer of the State of Texas, or any peace officer of the State of Texas:

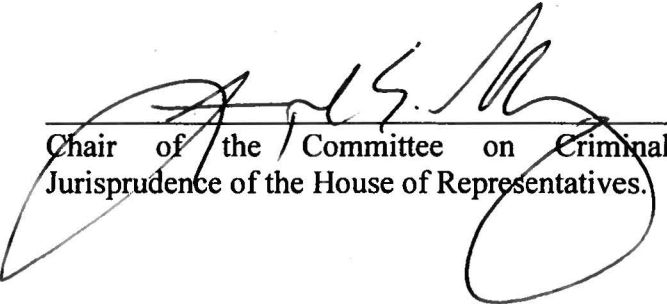
YOU ARE COMMANDED to summon Robert Roberson, located in the custody of the Texas Department of Criminal Justice, to appear before the Committee on Criminal Jurisprudence of the House of Representatives of the State of Texas at Room E2.016 Capitol Extension, 1100 Congress Avenue, Austin, Travis County, Texas, 78701, on 10/21/24, at 12pm, to attend and give testimony before the Committee and to remain in attendance from day to day until lawfully discharged by the Committee.

This subpoena is issued under a duly-adopted order of the Committee made in exercise of its lawful powers to compel the attendance of witnesses and the production of papers, as authorized by, and in the manner provided under, Section 301.024, Government Code, and Rule 4, Section 21, of the Rules of Procedure of the Texas House of Representatives.


Failure by the witness to obey this subpoena after its service by refusing to appear, to answer relevant questions, or to produce the papers described above may result in the witness being deemed in contempt of the Legislature and prosecuted as provided by law and the witness may be punished by fine or confinement, or both.

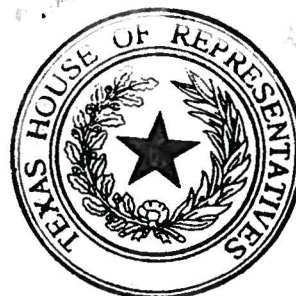
HEREIN FAIL NOT, but make due return hereof to this Committee.

ISSUED this 16th day of October, 2024.


Chair of the Committee on Criminal
Jurisprudence of the House of Representatives.

Attest:

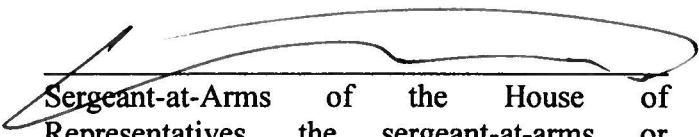

Chief Clerk of the House of Representatives



RETURN

Came to hand the 16th day of October, 2024, and executed the 16th day of October, 2024, at 6:42 o'clock P.m. by me,

Elva Samuella, Sergeant-at-Arms of the House of Representatives, the sergeant-at-arms or authorized agent of the Committee on Criminal Jurisprudence of the House of Representatives of the State of Texas, or any peace officer of the State of Texas, or a peace officer of the State of Texas, by delivering a copy of this subpoena to Gretchen Sween, attorney of record for Robert Roberson, in person at Texas Capital in Travis County, Texas.


Sergeant-at-Arms of the House of Representatives, the sergeant-at-arms or authorized agent of the Committee on General Investigating of the House of Representatives of the State of Texas, or any peace officer of the State of Texas, or any peace officer of the State of Texas.

ACCEPTANCE OF SERVICE BY WITNESS

I accept service of this subpoena.



Witness

LEGISLATIVE SUBPOENA DUCES TECUM

HOUSE OF REPRESENTATIVES §
OF §
THE STATE OF TEXAS §

TO THE HOUSE SERGEANT-AT-ARMS, OR ANY PEACE OFFICER OF THIS STATE:

You are hereby commanded that you summon:

Daniel H. Sharporn
General Counsel and Vice Chancellor, ad interim
University of Texas System Office for General Counsel
201 West 7th Street
Austin, TX 78701-2983

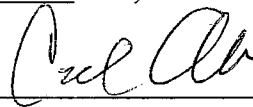
who resides or may be found in **Austin, Texas**, to produce documents referenced in the attachment to this subpoena duce tecum before the below-named Committee of the Texas House of Representatives of the State of Texas, as authorized by Tex Govt. Code §665.005 and Rule 4, Section 21, Rules of the House of Representatives:

House Select Committee on Transparency in State Agency Operations
JHR 310
Austin, Texas

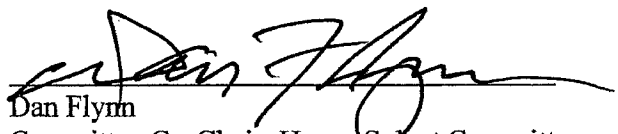
on **Monday, October 28, 2013, at 10:00am**. Production of documents response to this subpoena duces tecum may be made to either of the Committee Clerks, Richard Ramirez or Matthew Posey.

Herein fail not, but have you this writ in due time before the Committee, with your return thereon, showing how you have executed the same.

Given under my hand this the 23rd day of October A.D., 2013



Carol Alvarado
Committee Co-Chair, House Select Committee
on Transparency in State Operations



Dan Flynn
Committee Co-Chair, House Select Committee
on Transparency in State Operations

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

Ellic Sahualla
Bar No. 24057365
ellic@joemoodylaw.com
Envelope ID: 93665705
Filing Code Description: Brief on the Merits (all briefs)
Filing Description: Relator's Brief on the Merits
Status as of 10/29/2024 8:00 AM CST

Associated Case Party: Office of the Attorney General of Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Edward Marshall		edward.marshall@oag.texas.gov	10/28/2024 11:40:53 PM	SENT
William Cole		william.cole@oag.texas.gov	10/28/2024 11:40:53 PM	SENT
Craig Cospers		craig.cospers@oag.texas.gov	10/28/2024 11:40:53 PM	SENT

Associated Case Party: Texas Department of Criminal Justice

Name	BarNumber	Email	TimestampSubmitted	Status
Stephanie Greger		stephanie.greger@tdcj.texas.gov	10/28/2024 11:40:53 PM	SENT