

No. 24-0884

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IN THE  
SUPREME COURT OF TEXAS

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IN RE TEXAS HOUSE OF REPRESENTATIVES,  
*Relator.*

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Original Proceeding on a Petition for a Writ of Injunction to Preserve Jurisdiction

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RELATOR'S PETITION FOR WRIT OF INJUNCTION

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IDENTITY OF PARTIES AND COUNSEL

|                         |   |
|-------------------------|---|
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| Real Party in Interest  | Texas Department of Criminal Justice<br>Stephanie Greger and Edward<br>Marshall, Counsel of Record<br>Stephanie.Greger@tdcj.texas.gov<br>edward.marshall@oag.texas  |
| Underlying Cause Number | D-1-GN-24-008489, House of<br>Representatives et al. v. Texas<br>Department of Criminal Justice et al,<br>in the 53d Judicial District, Travis<br>County, Texas   |

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IN THE SUPREME COURT OF TEXAS

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IN RE TEXAS HOUSE OF REPRESENTATIVES,  
*Relator.*

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RELATOR'S ORIGINAL PETITION FOR A WRIT OF INJUNCTION

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TO THE HONORABLE SUPREME COURT OF TEXAS:

Relator Texas House of Representatives Committee on Criminal Jurisprudence respectfully request emergency temporary relief under the Texas Rules of Appellate Procedure, specifically that the Court grant a writ of injunction against the Texas Department of Criminal Justice and Texas Department of Criminal Justice Correctional Institutions Division and all persons in active concert or participating with it from impairing Mr. Roberson's compliance with the Committee's Subpoena and Writ of Attachment by executing him or by any other action. The District Court of Travis County for the 53d Judicial District (Hon. Jessica Mangrum, judge presiding) entered a temporary restraining order which ordered that the relief requested here. However, the Office of the Attorney General has asked the Texas Court of Criminal Appeals to set aside that order, a court which does not have jurisdiction over this matter. Due to the urgent nature of this

request we ask for the waiver of the Texas Rules of Appellate Procedure as to form and style and any predicate filings. Further, relator asks that this petition be additionally construed to include a motion to file a direct appeal with the supreme court without first presenting this petition to the court of appeals under all applicable laws and rules and its inherent equitable authority.

#### STATEMENT OF THE CASE

On October 17, 2024, Relator sought judicial enforcement of its subpoena and writ of attachment by filing an application for a temporary restraining order with the District Court of Travis County, 53d Judicial District. That same day, the court granted the application and entered the order. The attorneys for the executive branch did not contest the validity of the subpoena and writ of attachment.

The temporary restraining order was announced from the bench at approximately 4:30 p.m. on October 17, 2024, a copy of which is attached. No transcript has been prepared.

The executive branch must comply with the subpoena and writ of attachment and it cannot show that it will suffer any irreparable harm because of Mr. Roberson's compliance with the subpoena.

## STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction of this proceeding under Article V, Section 3, Texas Constitution, and under Subchapter A, Chapter 22, Government Code.

## ISSUE PRESENTED

Whether the executive branch is required to comply with a subpoena for and produce a witness in that branch's custody where the witness is summoned to provide testimony in aid of the exercise of the Legislature's constitutional lawmaking power, and where that compliance and production does not cause irreparable harm to the executive branch and that branch cannot any such harm.



## STATEMENT OF FACTS

On October 16, 2024, the Committee held a public meeting and heard testimony related to Criminal Procedure Article 11.073, which authorizes courts to grant relief on an application for a writ of habeas corpus if relevant scientific evidence is currently available and was not available at the time of the convicted person’s trial and would be admissible under the Texas Rules of Evidence today. (Ex. A, Meeting Minutes). The Committee issued a Subpoena to Robert Roberson “to provide all relevant testimony and information into relevant criminal procedure matters posted by the committee for ... future hearings.” (Ex. A 5; Ex. B, Subpoena). The Subpoena commands Mr. Roberson to appear before the Committee on October 21, 2024, at 12:00 P.M. to attend and give testimony and to remain in attendance from day to day until lawfully discharged by the Committee. (Ex. B). On October 17, 2024, the House of Representatives issued a Writ of Attachment pursuant to Section 301.024(c) of the Texas Government Code.

Mr. Roberson is an autistic individual who was convicted of capital murder based on scientific evidence available at the time of his trial. Mr. Roberson has sought—and been denied—relief under Texas Code of Criminal Procedure Article 11.073. Mr. Roberson will testify to, among other things, his perspective on the investigation, prosecution, and appellate

proceedings in his case, , all of which are important to the Committee’s duty to review the implementation of Article 11.073. (Ex. C, Affidavit). His testimony on his access to justice and due process are 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. No other person can provide the Committee with this information. Given the dispute over some of the facts surrounding his case, it is also essential for the Committee to hear from him personally to judge his credibility as a witness. (Ex. C)

Mr. Roberson, however, is sentenced to execution on October 17, 2024 at 6:00 p.m., which is the date of this Original Petition and before he will have the opportunity to testify to the Committee. Despite the Committee’s lawful issuance of the Subpoena and Writ of Attachment and its request for assistance pursuant to Section 301.028 of the Texas Government Code, TDCJ has made no affirmative assurance that it intends to comply with the Subpoena and present Mr. Roberson as ordered. Instead, on information and belief, TDCJ intends to execute Mr. Roberson on October 17, which will make it impossible to comply with the subpoena.

## ARGUMENT

**I. The Executive Branch has no discretion to refuse to comply with a valid legislative subpoena and, in fact, it has an affirmative duty to assist a legislative committee and such a question is a civil law matter under this Court’s jurisdiction.**

The House of Representatives has constitutional authority to promulgate statutes that set policies for the health, safety, and welfare of the great State of Texas. *See generally* Tex. Const. art. III, § 1. The House may conduct inquiries to aid it in identifying the need for, and the development of legislation. *E.g., McGrain v. Daugherty*, 273 U.S. 135, 165, 174 (1927) (recognizing that “[t]he state courts quite generally have held that the power to legislate carries with it by necessary implication ample authority to obtain information needed in the rightful exercise of that power, and to employ compulsory process for the purpose. . . . We are of opinion that the power of inquiry –with process to enforce it –is an essential and appropriate auxiliary to the legislative function”).

Realtor files this petition to enjoin the Respondents from taking actions that violate Texas law and the Travis County district court’s order enjoining them from doing so until the House can obtain the information it needs from the subpoenaed witness. Relator obtained a temporary restraining order in aid of its jurisdiction. At that hearing, counsel for the state conceded that the Committee’s subpoena and writ of attachment were valid. TDCJ has filed a

motion in the Court of Criminal Appeals to vacate that order in a writ of mandamus. Because this is a civil matter, not a criminal matter, that court does not have jurisdiction, but this Court does. That is, under Sec. 22.002(c), only the Court can issue orders to TDCJ to obey the subpoena; the Court of Criminal Appeals cannot do this.

In order to preserve its jurisdiction to resolve the motion and emergency writ of prohibition, this Court must enter an injunction to prohibit the executive branch from interfering with a valid exercise of legislative power.

No state actor, including TDCJ, has authority to execute Mr. Roberson when doing so would prevent compliance with a Subpoena and Writ of Attachment issued by a House committee under statute and constitutionally authorized rules of procedure.

Taking any action that prevents Mr. Roberson from testifying in compliance with the Subpoena and Writ of Attachment violates the Texas Legislature's constitutional and statutory rights and obligations for: (1) conducting a continuing study of a matter within its jurisdiction and of the instrumentalities of government administering or executing the matter; (2) examining the administration and execution of laws relating to matters within its jurisdiction; (3) conducting an investigation to collect adequate information and materials necessary to perform its duties; and (4)

recommending to the appropriate house any legislation the committee believes is necessary and desirable. See Tex. Gov't Code § 301.014.

The Committee has jurisdiction under the House Rules of Procedure, adopted pursuant to the House's exclusive rulemaking power under Article III, Section 11, Texas Constitution, over all matters pertaining to criminal law, prohibitions, standards, and penalties, as well as criminal procedure in the courts of Texas. On October 16, 2024, the Committee issued a subpoena for Robert Roberson to appear before the committee to testify on the committee's current inquiry regarding the criminal procedure related to capital punishment and new science writs under Article 11.073, Code of Criminal Procedure.

As it informed the district court, the Committee needs Mr. Roberson's testimony to aid it in developing legislation reforming Article 11.073, Code of Criminal Procedure, and legislation which may limit when capital punishment may be applied to people who are on the autism spectrum in the 89th Legislature, which convenes on January 14, 2025, and which lasts only for 140 calendar days; bills may only be filed between November 12, 2024 and March 14, 2025. Mr. Roberson will testify to, among other things, his perspective on the investigation, prosecution, and appellate proceedings in his case. His testimony on his access to justice and due process are unique

because he is a person with autism in a case unlike any other in our state—the first potential “shaken baby syndrome” execution. No other person can provide the Committee with this information. Given the dispute over some of the facts surrounding his case, it is also essential for the committee to hear from him personally to judge his credibility as a witness. It is for this legitimate legislative purpose that the Committee issued the subpoena to preserve his ability to testify in aid of the House’s constitutional lawmaking power under Article III, Texas Constitution.

The Committee lawfully issued a Subpoena and Writ of Attachment, as authorized by Section 301.024 of the Texas Government Code, to procure Mr. Roberson’s testimony in its ongoing investigation into 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.

Absent injunctive relief from this Court, there is a substantial threat that the House of Representatives will suffer imminent and irreparable injury while this case is pending. TDCJ has not affirmatively assured that it will assist the Committee, as it is required to do under Section 301.028 (“[e]ach standing committee . . . may request necessary assistance from all state agencies, departments, and offices [and e]ach state agency, department, and

office shall assist any legislative committee that requests assistance”). If TDCJ follows 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.

On the other hand, TDCJ has not shown there is irreparable injury. It argues that the order was to be enforced at 6:00 pm today. Although it is past that time, it contends waiting to hear Mr. Roberson’s testimony cannot be countenanced. 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, but it has no monetary value.

For all of the foregoing reasons, the Travis County District Court properly issued a temporary restraining order restraining TDCJ and all persons in active concert or participating with it from impairing Mr. Roberson’s compliance with the Subpoena and Writ of Attachment by executing him or by any other action.

To permit the Court of Criminal Appeals, which is restricted solely to criminal matters, to interfere with a duly authorized legislative subpoena

commanding a witness to appear to provide needed information in a legislative, non-criminal proceeding upsets the careful design of the Texas Constitution, under which the Legislature has responsibility for making the laws and may compel the attendance of any person it thinks necessary to aid its inquiries in that regard. This Court has the sole jurisdiction in this civil matter. *E.g., Commrs. Ct. of Nolan County v. Beall*, 81 S.W. 526, 528 (Tex. 1905).

Because Mr. Roberson is to appear before the Committee on Monday, October 21, the temporary delay to permit the House to exercise its constitutional jurisdiction more than outweighs any remote harm caused to the executive branch by a brief delay in the execution process.

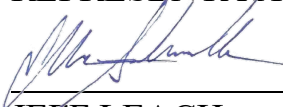


PRAYER

For the foregoing reasons, Relator asks the Court to grant this petition, including the incorporated motion for direct appeal in lieu of first presenting this to the court of appeals, and issue a writ of injunction grant a writ of injunction against the Texas Department of Criminal Justice and Texas Department of Criminal Justice Correctional Institutions Division and all persons in active concert or participating with it from impairing Mr. Roberson's compliance with the Subpoena and Writ of Attachment issued by the Committee on Criminal Jurisprudence by executing him or by any other action.

Respectfully submitted,

TEXAS HOUSE OF  
REPRESENTATIVES



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JEFF LEACH

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ATTORNEYS FOR RELATOR

Dated: October 17, 2024

## TEXT OF STATUTES

### Texas Government Code

Sec. 301.024. PROCESS. (a) A general investigating committee may issue process to compel the attendance of witnesses and the production of books, records, documents, and instruments required by the committee. Any other committee may issue process if authorized by the resolution creating the committee or the rules of procedure of the creating house. A committee may issue process to a witness at any place in this state.

(b) A committee chairman shall issue in the name of the committee all subpoenas and other process as directed by the committee.

(c) If necessary to obtain compliance with a subpoena or other process, a committee may issue writs of attachment.

(d) All process may be addressed to and served by any peace officer of this state or by the sergeant at arms appointed by the committee.

(e) A witness who attends a committee proceeding or a proceeding of either house under process is entitled to the same mileage and per diem as a witness who appears before a grand jury in this state. Mileage and per diem are paid from that house's contingent expense fund or from the contingent expense fund of the committee conducting the proceeding.

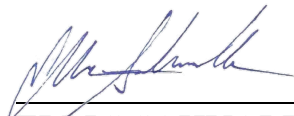
Sec. 301.028. COOPERATION OF OTHER AGENCIES. (a) Each standing committee, including a general investigating committee, may request necessary assistance from all state agencies, departments, and offices, including:

- (1) the State Auditor;
- (2) the Texas Legislative Council;
- (3) the Department of Public Safety; and
- (4) the attorney general.

(b) Each state agency, department, and office shall assist any legislative committee that requests assistance.

CERTIFICATE OF SERVICE

I, ELLIC SAHUALLA, certify that I sent a copy of the foregoing Petition by electronic mail to the Office of the Attorney General and the Texas Department of Criminal Justice counsel of record thru the e-filing system on October 17, 2024

  
\_\_\_\_\_

ELLIC SAHUALLA

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 Committee<sup>1</sup> 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

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<sup>1</sup> 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**

### 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  
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Filing Description: RELATORS PETITION FOR WRIT OF INJUNCTION  
Status as of 10/17/2024 8:43 PM CST

Associated Case Party: Texas Department of Criminal Justice

| Name             | BarNumber | Email                           | TimestampSubmitted    | Status |
|------------------|-----------|---------------------------------|-----------------------|--------|
| Stephanie Greger |           | stephanie.greger@tdcj.texas.gov | 10/17/2024 8:30:52 PM | SENT   |

Associated Case Party: Office of the Attorney General of Texas

| Name            | BarNumber | Email                     | TimestampSubmitted    | Status |
|-----------------|-----------|---------------------------|-----------------------|--------|
| Edward Marshall |           | edward.marshall@oag.texas | 10/17/2024 8:30:52 PM | ERROR  |