

No. 24-0162

IN THE SUPREME COURT OF TEXAS

KEN PAXTON, in his official capacity as Texas Attorney General and
GREG ABBOTT, in his official capacity as the Governor of the State of
Texas,

Petitioners,

v.

American Oversight,

Respondent.

On Petition for Review from the Third Court of Appeals, Austin
COA No. 03-23-00090-CV

RESPONDENT'S RESPONSE TO PETITION FOR REVIEW

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REFERENCE NOTATION

American Oversight will cite the record as follows:

Clerk’s Record	CR [CR:#]
Reporter’s Record	1RR [1RR:#],
Petitioners’ Petition	Pet. (page)

STATEMENT OF THE CASE

<i>Nature of the Case:</i>	Respondent American Oversight sought issuance of a writ of mandamus to Governor Abbott and Attorney General Paxton, in their official capacities, to require them to release public information that Respondent alleges was withheld from their responses to its Texas Public Information Act (“PIA”) requests. CR.713. Petitioners filed pleas to the jurisdiction asserting sovereign immunity from suit. CR.347, 500.
<i>Trial Court:</i>	250 th Judicial District of Travis County The Honorable Daniella DeSeta Lyttle
<i>Disposition in the Trial Court:</i>	The trial court denied Petitioners’ pleas to the jurisdiction. CR.1087-88.
<i>Parties in the Court of Appeals:</i>	Petitioners were the appellants. Respondent was the appellee.
<i>Disposition in the Court of Appeals:</i>	The court of appeals affirmed, holding that the trial court had jurisdiction to issue writs of mandamus against the Governor and Attorney General as the PIA explicitly grants jurisdiction over all governmental bodies and Respondent pleaded allegations showing Petitioners had refused to provide public information, sufficient to waive sovereign immunity. Further, contrary to Petitioners’ claim, the trial court did not require <i>in camera</i> review prior to denying the pleas to the jurisdiction. Finally, Respondent’s mandamus claim was not rendered moot by partial production of records. <i>Paxton v. Am. Oversight</i> , 683 S.W.3d 873 (Tex. App.—Austin 2024, pet. pending).

STATEMENT OF JURISDICTION

The Court has jurisdiction under Texas Government Code Section 22.001(a).

ISSUES PRESENTED

The Texas Public Information Act “favors an open and transparent government to ensure the people ‘retain control over the instruments they have created.’” *Paxton v. City of Dall.*, 509 S.W.3d 247, 249 (Tex. 2017) (quoting Tex. Gov’t Code § 552.001(a)). This policy is based on the principle that the “government is the servant and not the master of the people,” *id.* at 251, and to that end, the Texas Legislature waived sovereign immunity for governmental bodies that refuse to make public information available to a requestor and granted the trial court jurisdiction over those claims. The issues presented are:

1. The Court of Appeals correctly determined that the trial court had jurisdiction to issue a writ of mandamus against each Petitioner.
2. The Court of Appeals correctly determined that Petitioners’ continued refusal to provide American Oversight with public information waived sovereign immunity, conferring the trial court with subject matter jurisdiction.

INTRODUCTION

As this Court has acknowledged, the Texas Legislature, in crafting the Public Information Act (“PIA”), “forcefully articulate[d] a policy of open government.” *A&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 675 (Tex. 1995). The PIA grants requestors the right “to complete information about the affairs of government and the official acts of public officials and employees.” Tex. Gov’t Code § 552.001. To enforce this principle, a requestor may petition a district court for a writ of mandamus against any governmental body for violations of the PIA, Tex. Gov’t Code § 552.321(b), and sovereign immunity is waived for those governmental bodies—including the state’s executive officials—if they “refuse[] to supply public information.” *Id.* at § 552.321(a). In this case, Respondent properly filed a Petition for Writ of Mandamus in the Travis County District Court after Petitioners refused to supply public information in response to seven of American Oversight’s PIA requests.

As the trial court and Court of Appeals both recognized, this is an uncomplicated public records matter raising unexceptional issues. In its well-reasoned decision, the appeals court held that no constitutional or statutory provision overrides Tex. Gov’t Code § 552.321’s express grant of jurisdiction to the district courts to issue writs of mandamus to address PIA violations, including against the Governor and Attorney General. *Paxton v. Am. Oversight*, 683 S.W.3d 873, 884

(Tex. App.—Austin 2024, pet. pending). Furthermore, the Court of Appeals confirmed that Respondent met its burden to demonstrate the trial court’s jurisdiction by pleading factual allegations that Petitioners have refused to provide public information. In addition to recognizing Respondent’s specific, nonconclusory allegations concerning Petitioners’ incomplete searches, misidentification of public information, and misapplied PIA exceptions, the Court of Appeals also affirmed—based on established precedent—that Petitioners’ reliance on opinions from the Attorney General’s Open Records Division (“ORD”) to withhold information is subject to review by the trial court. *Id.* at 885-87. The Court of Appeals also found that Petitioners’ jurisdictional evidence did not negate Respondent’s allegations, and thus sovereign immunity was waived. *Id.* at 887.

Despite both lower courts recognizing the unremarkable PIA matter before them and rejecting each of Petitioners’ speciously overcomplicated arguments, Petitioners continue their efforts to evade transparency. Beyond doubling down on their unsuccessful claims, they now raise yet another new, though meritless, argument: that Respondent should have sued Petitioners’ *offices*, not themselves, as public records officers—a position that cannot withstand this Court’s precedent. The Petition before this Court reflects Petitioners’ ongoing campaign to limit the PIA, thereby avoiding the exact transparency and accountability guaranteed by the Texas

Legislature. The Court should deny the Petition and allow this straightforward PIA case to proceed in the trial court.

STATEMENT OF FACTS

The Court of Appeals accurately stated the nature of the case. *See supra* p. viii.

1. The Texas Public Information Act.

The Texas Legislature adopted the PIA to inform the public about government affairs so the people could “retain control over the instruments they have created.” Tex. Gov’t Code § 552.001(a). The philosophy underpinning the PIA is that “[t]he people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know,” *id.*, and therefore should “be liberally construed in favor of granting a request for information,” *id.* at § 552.001(b).

2. American Oversight’s Public Information Requests and Petitioners’ Responses.

This litigation comprises seven PIA requests Respondent submitted to Petitioners in 2021 and 2022. CR:714-23.

- Abbott Non-Governmental Accounts (CR:714–15)

Submitted Jan. 7, 2022, requesting emails regarding official government business from non-governmental addresses attributed to Governor Abbott.

CR:731–34. ORD concluded the Governor could withhold all responsive information. CR:755–58.

- Abbott Texts (CR:715–17)

Submitted Feb. 8, 2022, requesting text messages sent or received by Governor Abbott regarding official government business. CR:760–63. ORD concluded that the Governor could withhold some of the responsive information. CR:791–98. The Governor’s Office produced 100 pages of heavily-redacted text messages. CR:584–685.

- Abbott Gun Groups (CR:717–18)

Submitted June 6, 2022, requesting communications between the Governor’s Office and pro-gun advocacy organizations. CR:800–04. The Governor’s Office claimed it found no responsive information. CR:806–07.

- Paxton January 6th Communications (CR:718–19)

Submitted March 25, 2021, requesting emails sent by Attorney General Paxton or Solicitor General Stone from January 6 through January 8, 2021. CR:809–13. The Attorney General produced two records, CR:815–20, and ORD concluded the rest could be withheld. CR:826–28.

- Paxton Non-Governmental Accounts (CR:719–20)

Submitted August 6, 2021, requesting emails regarding official

government business from non-governmental email addresses attributed to the Attorney General. CR:830–33. ORD concluded all information could be withheld. CR:840–43.

- Paxton Texts (CR:721–22)

Submitted on May 2, 2022, requesting text messages sent or received by Attorney General Paxton regarding official government business. CR:845–48. The Attorney General produced some responsive records to American Oversight, CR:850–57, and ORD concluded the rest could be withheld. CR:873–75.

- Paxton Gun Groups (CR:722–23)

Submitted on June 7, 2022, requesting communications between the Attorney General’s Office and pro-gun advocacy organizations. CR:865–69. The office claimed it had no responsive information. CR:871.

Concluding that Petitioners’ responses failed to provide public information held by Petitioners, Respondent filed a Petition for Writ of Mandamus. CR:4–163.

3. Trial Court Proceedings.

Petitioners filed Answers generally denying Respondent’s claims and asserting a sovereign immunity defense. CR:164–66, 344–46. They subsequently filed Pleas to the Jurisdiction arguing that sovereign immunity had not been waived as to any claims, nullifying the trial court’s subject matter jurisdiction. CR:347–66,

500–56. In support, Petitioners provided bare-bones declarations from their respective public information officers. CR:367-71; CR:511-13. Respondent opposed, arguing that Petitioners had violated the PIA by refusing to provide public information, thereby waiving sovereign immunity. CR:557-692. The trial court denied both Pleas after a hearing, RR:1-39, effectively holding that Petitioners’ affidavits did not support their assertions that the records provided to American Oversight were complete, CR:1087-88. For example, some public records “may have [been] identified... as ‘non-responsive’ and therefore excluded” from review entirely, requests may have been improperly narrowed during the search process, or records may have been improperly withheld as privileged attorney-client communications. CR:1088.

4. Court of Appeals Proceedings.

Following Petitioners’ interlocutory appeal, CR:1089-90, the Court of Appeals upheld the trial court’s denial, *Am. Oversight*, 683 S.W.3d at 889, concluding that neither the Attorney General nor Governor is excepted from Tex. Gov’t Code § 552.321(b)’s grant of jurisdiction to the district courts to issue writs of mandamus for violations of the PIA, *id.* at 884. Section 552.321(b) prevails over Tex. Gov’t Code § 22.002(c)’s general grant of authority to the Texas Supreme Court to issue writs of mandamus against executive officers, since the former was enacted “to expressly delegate jurisdiction to the district courts” after this Court

invited the Legislature to grant that statutory authority over PIA actions. *Id.* at 882-83 (citing *Sharp*, 904 S.W.2d at 672). In addition, neither Tex. Const. art. V, section 3’s permissive language, nor art. V, section 8’s general grant of jurisdiction to district courts conflicts with Section 552.321(b) or excepts either Petitioner from district court jurisdiction. *Id.* at 883.

The court further held that Respondent “affirmatively pleaded and demonstrated a valid waiver of immunity under the PIA.” *Id.* at 887. “The evidence is undisputed that [Petitioners] continue to withhold documents responsive to [Respondent’s] requests, and [Respondent’s] factual allegations include challenges to the completeness of the information that was produced and the correctness of ORD’s letter rulings concerning the claimed exceptions that [Petitioners] rely on to support their withholding of responsive documents.” *Id.* at 886. In addition to information Petitioners admit to withholding subject to ORD opinions, the court also pointed to specific allegations supporting inferences that other responses were incomplete. *Id.* at 887. These allegations were “unnegated” by Petitioners, *id.*, and thus sovereign immunity had been waived.¹

This Petition for Review followed.

¹ The Court of Appeals issued additional holdings in Respondent’s favor, not at issue in this appeal. *Id.* at 888-89.

SUMMARY OF THE ARGUMENT

I. The Court of Appeals properly concluded that the trial court has mandamus jurisdiction over both Petitioners under Tex. Gov't Code § 552.321, which supersedes earlier enacted, more general statutory jurisdictional directives. This section expressly authorizes district courts to issue writs of mandamus against governmental bodies that violate the PIA, speaking to both jurisdiction and venue for such actions. Art. V, section 8 of the Texas Constitution establishes default jurisdiction with the district courts, and since there is no exception for the Governor, district court jurisdiction under that provision and Section 552.321 applies. Furthermore, as the Governor and Attorney General are officers for public information, *see* Tex. Gov't Code §§ 552.201(a); 552.221(a), writs of mandamus issued against them in their official capacities are functionally equivalent to those issued against their offices.

II. Both Petitioners have refused to supply public information properly requested by Respondent, thus waiving sovereign immunity. As both lower courts determined, Respondent adequately alleged defects in Petitioners' responses and identified open questions concerning their PIA compliance. Moreover, Petitioners' evidence was insufficient to overcome those allegations and demonstrate that their responses to Respondent's PIA requests were complete or that Petitioners had fully complied with the statute. Thus, because genuine questions of material fact remain regarding

whether Petitioners have refused to supply public information, sovereign immunity has been waived under the PIA.

ARGUMENT

1. THE DISTRICT COURT HAS MANDAMUS JURISDICTION OVER PETITIONERS.

As the Court of Appeals correctly determined, Tex. Gov't Code § 552.321(b) (“Subsection (b)”), expressly grants district courts jurisdiction to issue mandamus relief in PIA actions against the Governor and Attorney General. *Paxton v. Am. Oversight*, 683 S.W.3d 873, 884 (Tex. App.—Austin 2024, pet. pending). This straightforward conclusion should be the end of the matter. Petitioners’ assertions—including two entirely new claims²—offer no basis to disturb the Court of Appeals’ opinion.

A. The Court Below Correctly Determined that Subsection (b) Conveys Jurisdiction to the District Courts Over Petitioners.

As Petitioners concede, “[j]urisdiction to issue writs of mandamus typically lies in the trial court, unless either a statute or the Constitution dictates otherwise.” Pet. at 9; *accord* Tex. Const. art. V, Section 8; *accord* Pet. at 9. Prior to 1999, as this Court noted in *Sharp*, 904 S.W.2d at 673-74, pursuant to Tex. Gov. Code §

² Though these claims were inappropriately raised on appeal for the first time, *Greene v. Farmers Ins. Exch.*, 446 S.W.3d 761, 764 n. 4 (Tex. 2014) (“[w]e do not consider issues that were not raised in the courts below”) (emphasis omitted), Respondent addresses them herein.

22.002(c), jurisdiction to issue writs of mandamus against executive offices for public records violations lay solely in the Texas Supreme Court. *Id.* In that case, the dissent and majority both raised concerns with this arrangement, with the majority calling on the Legislature to “exercise its constitutional authority to specify which courts are to have jurisdiction over remedial actions to enforce TORA [the predecessor to the PIA].” *Id.* at 681; *see also id.* at 682 (Hecht, J., dissenting) (“[t]his Court has plenty to do without taking upon itself the *sole* responsibility for reviewing every open records dispute involving six large state offices.”) (emphasis in original). In 1999, the Legislature did just that when it passed Subsection (b). *See Act of June 19, 1999, 76th R.S., ch. 1319, § 27, 1999 Tex. Gen. Laws 4511.*

Tex. Gov’t Code § 552.321(b) provides in pertinent part: “A suit [for mandamus] filed by a requestor under this section must be filed in a district court for the county in which the main offices of the governmental body are located.” As the Court of Appeals correctly observed, the Legislature enacted Subsection (b) in response to this Court’s call to grant “express statutory authorization . . . naming district courts as the proper fora” for mandamus actions against *all* executive officers under the PIA. *Am. Oversight*, 683 S.W.3d at 882-84 (quoting *Sharp*, 904 S.W.2d at 672). Furthermore, even if there were a statutory conflict with Tex. Gov’t Code § 22.002(c), Subsection (b) is both the later and more specific, rather than general,

provision, as it applies specifically to writs of mandamus under the PIA, including those against executive department officers. *Id.* at 882-83.

Petitioners purport to reject Subsection (b)'s application, however, because it fails to explicitly name their offices as subjects of jurisdiction. Pet. at 13-14. This is nonsensical. Subsection (b) applies to writs of mandamus filed against any "governmental body," Tex. Gov't Code § 552.321(a), and the PIA definition of "governmental body" includes Petitioners' offices, *id.* at § 552.003(1)(A)(i) (" . . . institution, agency, or office that is within . . . the executive or legislative branch of state government and that is directed by one or more elected or appointed members"). Subsection (b) explicitly grants jurisdiction to district courts over *all* governmental bodies. *Id.* at § 552.321(b). Had the Legislature wanted to carve an exception for offices of the Governor and Attorney General, it would and could have done so. *See Am. Oversight*, 683 S.W.3d at 880 (citing *Presidio Indep. Sch. Dist. v. Scott*, 309 S.W.3d 927, 930 (Tex. 2010)); *see also id.* at 883 (quoting *In re Allen*, 366 S.W.2d 696, 706 (Tex. 2012) ("presuming that 'Legislature is aware of relevant case law when it enacts or modifies statutes' and explaining that 'statute is presumed to have been enacted by the legislature with complete knowledge of the existing law and with reference to it'" (citation omitted))).

Moreover, Petitioners' position makes no sense because it improperly renders Subsection (b) superfluous. *See Hunter v. Ft. Worth Cap. Corp*, 620 S.W.2d 547,

551 (Tex. 1981) (“the legislature is never presumed to do a useless act”). Prior to the 1999 amendment, district courts already had jurisdiction over most PIA actions, pursuant to Tex. Const. art. V, § 8. *See Sharp*, 904 S.W.2d at 671-72 (recognizing default jurisdiction in district courts, except as to executive officers). Subsection (b) was thus unnecessary unless it was intended to address this Court’s call in *Sharp* to add district court jurisdiction over executive offices, as well. *See id.* at 672.

Petitioners try to sidestep this obvious point by claiming—for the first time—that Subsection (b) is merely a “venue provision.”³ Pet. at 11. They are wrong. The same provision can both grant jurisdiction *and* provide for venue. *Wichita County v. Hart*, 917 S.W.2d 779, 783 (Tex. 1996) (“The language of some [venue provisions] unambiguously indicates that the legislature intended the provisions to be jurisdictional in nature.”)⁴ The venue provision applicable to public records suits prior to 1999 is functionally the same as that appearing in Subsection (b). *Compare* Tex Civ. Prac. & Rem. Code § 15.002(a)(3) (“all lawsuits shall be brought . . . in the

³ While jurisdiction refers to the court’s authority over the case, venue relates solely to location. *See Carpenter v. Daspit L. Firm, PLLC*, No. 01-22-00282-CV, 2023 WL 3956861, at *7 (Tex. App. —Hou. [1st Dist.] June 13, 2023, no pet.).

⁴ Petitioners rely on *Wichita County*, 917 S.W.2d at 781, and *Dallas Area Rapid Transit v. Johnson*, No. 005-00-00657-CV, 2001 WL 88195 (Tex. App. – Dallas Jan. 26, 2001, no pet.), but neither supports their argument. The provisions at issue in each case were strictly ones of venue: they appeared under code section titles denominated as venue provisions, were permissive in nature, and other courts had concurrent jurisdiction.

county of defendant's principal office in this state, if defendant is not a natural person") *with* Subsection (b) ("for the county in which the main offices of the governmental body are located"). Failure to read the remaining portion of Subsection (b) as anything other than a jurisdictional grant would mean the legislation accomplished nothing, an unacceptable result. *See Hunter*, 620 S.W.2d at 551.⁵

Petitioners attempt to sow further confusion by reference to two constitutional provisions on jurisdiction, but neither supports their argument. As the Court of Appeals rightly noted, Tex. Const. art. V, § 3(a)'s permissive language *allowing* for Supreme Court jurisdiction over mandamus actions does not conflict with Subsection (b)'s express, *mandatory* grant of jurisdiction to district courts. *Am. Oversight*, 683 S.W.3d at 883. And of course, Subsection (b) is entirely consistent with art. V, § 8's default grant of jurisdiction to the district courts. *Id.*

⁵ Petitioners' new venue argument comes with particular ill-grace given the Attorney General's prior admission that Subsection (b) is indeed jurisdictional, describing it as "providing for district court *jurisdiction* over mandamus suit related to [PIA] requests " *See* Response to Petition for Writ of Mandamus of Respondent and Real Party in Interest Texas Board of Pardons and Paroles at n.7, *In Re Zahir Querishi, Relator*, (No. 17-0795), 2018 WL 389217 (Tex. 2018) (emphasis added).

B. The Distinction between Petitioners and their Offices Is Irrelevant to Jurisdiction.

In another new argument, Petitioners object to the district court’s jurisdiction because they are office holders and not the “governmental body” specified for jurisdiction in Subsection (b). *See* Pet. at 13-14. This argument also fails.

“It is fundamental that a suit against a state official is merely ‘another way of pleading an action against the entity of which [the official] is an agent.’” *Texas A&M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 844 (Tex. 2007) (quoting *Kentucky v. Graham*, 473 U.S. 159, 165 (1985)). When litigation against an individual in their official capacity implicates state action or the sovereign’s liability, then the action “is, in all respects other than name, . . . a suit against the entity.” *Koseoglu*, 233 S.W.3d at 844 (quoting *Graham*, 473 U.S. at 166).⁶ By asserting sovereign immunity, Pet. at 8, 15-17, available only to the governmental body, Petitioners admit that this mandamus action against them in their official capacities is equivalent to a suit filed against their offices.⁷

⁶ Petitioners cite *Patel v. Tex. Dep’t Licensing & Regulation*, 469 S.W.3d 69, 76 (Tex. 2015), to argue that officers and offices cannot be conflated, Pet. at 14, but unlike here, that case dealt with *ultra vires* acts.

⁷ Tellingly, Petitioners relied on their status as “governmental unit[s]” under Tex. Civ. Prac. & Rem. Code § 51.014(a)(8) to bring their interlocutory appeal below. *See* Br. for Appellants, June 7, 2023, at 13.

This principle readily applies in the PIA context. An executive officer is the chief administrative officer and thus, the officer for public information is required to produce public records. *See Sharp*, 904 S.W.2d at 673-74 (upholding mandamus jurisdiction against State Comptroller); *accord* Tex. Gov't Code § 552.201(a) (“chief administrative officer of a governmental body is the officer for public information” who must produce records); *see also id.* at § 552.221(a) (“An officer for public information of a governmental body shall promptly produce public information for inspection, duplication, or both on application by any person to the officer.”). The Governor and Attorney General are the chief administrators of their offices, and therefore, the officers for public information to whom records requests are properly addressed.

Recognizing that “[a] literal application of the mandamus provision” against a *governmental body*, when the statute’s duties fall to the *officer*, is technically “unworkable,” this Court was nonetheless comfortable with the legal fiction: “This discrepancy [between an office and an officer] can be overlooked in most cases, and courts can treat petitions for writ of mandamus against governmental bodies and against public records officers interchangeably.”⁸ *Sharp*, 904 S.W.2d at 681. The

⁸ That Petitioners substituted Provisional Attorney General Scott for Attorney General Paxton in this matter when the latter was facing impeachment proceedings underscores this logic and belies the good faith of Petitioners’ argument. *See Br.* for

Court’s only concern was that, under the previous version of the statute, “in a few proceedings the exact identity of the respondent matters for purposes of jurisdiction,” and thus it invited the Legislature to consider the matter. *Id.* The Legislature dealt with these issues by passing Subsection (b) and extending jurisdiction to *all* executive offices, *see supra* Part I.A., eliminating any instances where the exact identity of the respondent would matter and leaving district courts free to treat mandamus petitions against public records officers as if they were against the governmental body. Accordingly, the Court of Appeals’ conclusion that the Governor and Attorney General “in their official capacities as officers of governmental bodies” are properly subject to the trial court’s jurisdiction in this matter, *Am. Oversight*, 683 S.W.3d at 884, is proper and consistent with the statute, including this Court’s interpretation and the Legislature’s amendment.

2. THE PLEADING REQUIREMENTS FOR A MANDAMUS ACTION REQUIRE NO CLARIFICATION.

Petitioners further overcomplicate this straightforward PIA action by ignoring the factual allegations and on-point case law relied on by the courts below. Both lower courts found that American Oversight offered nonconclusory allegations sufficient to support the inference that Petitioners’ responses to its PIA requests are

Appellants, June 7, 2023 (caption listing “John Scott in his Official Capacity as Provisional Texas Attorney General” among appellants).

incomplete, in violation of Tex. Gov't Code § 552.001(a). These incomplete responses amount to a refusal to supply public information under Section 552.321(a), waiving Petitioners' sovereign immunity and subjecting them to the district court's jurisdiction. The Court of Appeals also held that the uncontested evidence that Petitioners are withholding certain records pursuant to ORD decisions independently amounts to a refusal, sufficient to establish jurisdiction. *Am. Oversight*, 683 S.W.3d at 885-87. Despite standard pleading requirements and established precedent supporting the lower court decisions, Petitioners insist that this Court needs to "clarify" settled pleading requirements. Pet. at 15. Neither of their arguments supports this result.

First, Petitioners claim that the Court of Appeals held "that Respondent could defeat a plea to the jurisdiction by relying on skepticism unaccompanied by facts." Pet. at 15. This is false. Both lower courts properly examined Respondent's factual allegations, and reasonable inferences therefrom, showing "records that should have been produced but have not been, . . . gaps in [Petitioners'] process for searching for and identifying public information subject to the PIA, and . . . that the PIA exceptions have been misapplied." *Am. Oversight*, 683 S.W.3d at 887. As one example, the Court of Appeals determined that American Oversight's allegations concerning Governor Abbott's reported interactions with the NRA leading up to its convention

supports the inference that the Governor’s PIA response disclaiming any records of communications with the organization during that timeframe is incomplete. *Id.*

It is Petitioners’ burden to “meet the summary judgment proof standard for its assertion that the trial court lacks jurisdiction” by showing evidence that they are not withholding public records. *Mission Consol. Indep. Sch. Dist. v. Garcia*, 372 S.W.3d 629, 635 (Tex. 2012). They have failed to do so. *See Am. Oversight*, 683 S.W.3d at 886-87 (finding Petitioners’ “jurisdictional evidence has not negated [Respondent’s] allegations”); *id.* at 887 (court must view unnegated jurisdictional allegations as true) (citing *Texas Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226-28 (Tex. 2004)).⁹

Second, Petitioners wrongly claim that the PIA’s text does not support the “burden” of judicial review when governmental bodies have refused to supply public information based on an ORD opinion. Pet. at 16-17. Accordingly, they call on this Court to “clarify” the meaning of the word “refus[e].” *Id.* at 16. There is no need. Under established case law and rules of statutory construction, refusal to produce records, even in reliance on an ORD decision, is still a refusal under Tex. Gov’t

⁹ Petitioners complain that PIA jurisdiction here would “nullif[y] the ‘presump[tion] that public officials act in good faith and without’ improper motive in performing their public functions,” but cite *Abbott v. Anti-Defamation League Austin, Sw., & Texoma Regions*, 610 S.W.3d 911, 923 (Tex. 2020), an inapposite case related to the formulation of policy. *See* Pet. at 16.

Code § 552.321(a), subject to judicial review. When a governmental body “continu[es] to withhold . . . public information on the ground that it is excepted from disclosure” based on an ORD decision, that is “sufficient to demonstrate a refusal . . . under PIA Section 552.321(a).” *See Muir v. Univ. of Texas at Austin*, No. 03-22-00196-CV, 2023 WL 4110843, at *4 (Tex. App. —Austin June 22, 2023, no pet.) (cleaned up).¹⁰ *Muir*’s holding logically follows the principle established by this Court that ORD decisions are subject to judicial review. *See Kallinen v. City of Houston*, 462 S.W.3d 25, 28 (Tex. 2015). Applying this precedent, the Court of Appeals properly found that “seeking a decision from the ORD that they could decline to produce some of the requested information and then withholding some of the information based on the ORD’s letter rulings” constituted an unwillingness by Petitioners to supply public information. *Am. Oversight*, 683 S.W.3d at 885 (citing *Muir*, 2023 WL 4110843, at *4).

¹⁰ Petitioners claim that the court below had “faulted” them for refusing to waive privileges the ORD had determined applied. Pet. at 7, 16-17. However, Petitioners omit vital context when quoting the Court of Appeals, whose full statement merely distinguishes another case: “*In contrast [to City of El Paso], Respondents are withholding information based on exceptions that they could waive, such as the attorney-client privilege.*” *Am. Oversight*, 683 S.W.3d at 873 n. 6 (emphasis added). The opinion separately noted this Court’s ruling that the trial courts have jurisdiction to review ORD’s letter rulings. *Id.*

This result is consistent with both canons of statutory construction and legislative intent. Texas courts must read words “in context” and construe them “according to . . . common usage.” Tex. Gov’t Code § 311.011. In the context of the PIA, the word “refuse” is commonly understood to mean “to show or express a positive unwillingness to do or comply with.” *City of El Paso v. Abbott*, 444 S.W.3d 315, 324 (Tex. App. 2014) (quotations omitted). By withholding records, even pursuant to an ORD decision, Petitioners demonstrate an unwillingness to produce responsive information. As for legislative intent, the PIA was passed to provide the public with “complete information about the affairs of government and the official acts of public officials and employees,” Tex. Gov’t Code § 552.001(a), and the statute mandates a liberal construction to implement this policy, *id.* § 552.001(b). To allow governmental bodies to evade the “burden” of judicial review when they shirk their PIA obligations would be in direct conflict with the stated purpose of the law.

* * * * *

In an ongoing quest to avoid basic transparency under the PIA, Petitioners overcomplicate straightforward statutory language and dodge relevant case law. As the courts below recognized, the PIA grants the district court jurisdiction over Petitioners, and this result should hold not in spite of, but because of, their powerful offices. Furthermore, American Oversight’s unnegated, nonconclusory factual allegations are sufficient to waive Petitioners’ sovereign immunity and permit this

suit to proceed. The Court of Appeals saw through Petitioners' dubious claims to the contrary and issued an appropriate and well-reasoned opinion that this Court need not disturb.

PRAYER

For the reasons stated above, the Court should deny Petitioners' Request for Review.

Dated: May 13, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify on behalf of Respondent American Oversight that this brief contains 4,494 words according to the word count feature of the Microsoft Word software used to prepare this brief, excluding portions of the brief exempt from the word count under Texas Rule of Appellate Procedure 9.4(i)(1).

/s/ Catherine L. Robb
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CERTIFICATE OF SERVICE

I certify that on May 13, 2024, a true and correct copy of the above and foregoing Respondent's Brief has been served to all attorneys of record registered to receive filings through the e-filing system to the counsel listed below.

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