

No. 21-0667

In the Supreme Court of Texas

In re Greg Abbott, in his official capacity as Governor of the State of Texas; Matthew McDade Phelan, in his official capacity as the Speaker of the House of Representatives; and the State of Texas,

Relators.

On Petition for Writ of Mandamus to the
261st Judicial District Court, Travis County

**RELATOR MATTHEW MCDADE PHELAN'S
AMENDED PETITION FOR WRIT OF MANDAMUS**

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STATEMENT REGARDING RECORD REFERENCES

Relator Phelan relies on the Sworn Mandamus Record filed by Relators on August 9, 2021. References to the mandamus record, which is consecutively paginated, are in the form “(MR.[MR page#].)”

Selected materials from the mandamus record are attached in the Appendix to this petition as required or appropriate. *See* TEX. R. APP. P. 52.3(k). References to the exhibits in the Appendix are in the form “(App’x. Tab ___ at [MR page#].)”

The district court held an *ex parte* hearing on August 8, 2021. No transcript of the hearing has been made available, but to Relator Phelan’s knowledge, no testimony was adduced at this hearing. TEX. R. APP. P. 52.7(a)(2).

STATEMENT OF THE CASE

Nature of the underlying proceeding:

Nineteen Democratic members of the Texas House of Representatives sought injunctive and declaratory relief asserting that Governor Greg Abbott, Speaker of the Texas House of Representatives Matthew Phelan, and the State of Texas (“Relators”) have no authority to secure a quorum of the House of Representatives by compelling them to attend a special session of the Legislature by civilly arresting them. (MR.004–030.)

Respondents:

The Honorable Brad Urrutia, 450th Criminal District Court, Travis County

The Honorable Lora Livingston, 261st Civil District Court, Travis County

Respondents’ challenged actions:

On August 8, 2021, at 8:14 p.m., the trial court issued an *ex parte* temporary restraining order enjoining the Relators from detaining Democratic members of the Texas House of Representatives who fail to attend a special session of the Legislature. (MR.001–003.)

Supreme Court of Texas

On August 9, 2021, the Relators filed a Petition for Writ of Mandamus and an Emergency Motion for Temporary Relief. On August 10, this Honorable Court issued a stay of the *ex parte* temporary restraining order and ordered a response to the Petition for Writ of Mandamus by 4:00 pm on August 12, 2021.

STATEMENT OF JURISDICTION

This Court has the power and jurisdiction to issue the requested writ of mandamus under Article V, Section 3 of the Texas Constitution, Section 22.002(a) of the Texas Government Code, and Texas Rule of Appellate Procedure 52.

This case presents extraordinary circumstances and questions of law that are important to the jurisprudence of the State—whether the Speaker of the Texas House of Representatives may be haled into court in an effort to prevent him from performing quintessential legislative functions. The trial court’s decision granting Plaintiffs a temporary restraining order implicates the separation-of-powers tenets embodied by the Speech and Debate Clause, Texas Constitution, art. III, § 21, as well as a critical public interest: the functional workings of the Texas legislature and its ability to take up matters of importance to its Texas constituents. *See In re Perry*, 60 S.W.3d 857, 860 (Tex. 2001) (orig. proceeding). Only by granting review of this original proceeding can the Court correct the trial court’s error and uphold the constitutional limitations on the judiciary’s power. *See TEX. R. APP. P. 56.1(a)(4)* (stating this Court will consider whether a case “involves constitutional issues” when deciding whether to grant a petition for review).

ISSUE PRESENTED

Whether Respondents clearly abused their discretion in enjoining the Speaker of the Texas House of Representatives from carrying out his duties under the Texas Constitution and the House Rules of Procedure to secure a quorum during a legislative session.

INTRODUCTION

The Relators all agree that the constitution and the rule of law must be enforced. To that end, the temporary restraining order must be vacated or reversed.

Reaffirming the authority of the Speaker, on behalf of the Texas House and as directed by the House, to take those legislative acts authorized by the Texas Constitution and House Rules of Procedure to secure a quorum, is necessary for the House to do the will of the people it serves.

[T]he Legislature represents the sovereign will of the people, and has the power to act at its discretion upon any subject of legislation.

McKenzie v. Baker, 88 Tex. 669, 677 (Tex. 1895).

Late Sunday, August 8, 2021, during the second day of the second special session of the 87th Texas Legislature, a trial judge issued a two-page order preventing the Speaker of the Texas House of Representatives (the “Speaker” or “Relator Phelan”)—and by extension, the House—from utilizing express constitutional authority to compel the attendance of absent legislators. TEX. CONST. art. III, § 10. Similarly, the order also purported to prohibit the Governor and the State from detaining such absent legislators under the same constitutional authority. This unprecedented *ex parte* order was issued at the behest of nineteen Democratic legislators (hereinafter “Plaintiffs”). Plaintiffs left Texas last month with the stated purpose of

denying the House a quorum and preventing it from passing legislation, which undermines core principles of separation of powers, and inflicts irreparable harm on the House of Representatives and, more broadly, the people of the State of Texas represented by the House. The order should be promptly reversed.

The Speech and Debate Clause in the Texas Constitution provides Members of the House—including the Speaker¹—immunity arising from “words spoken in debate.” TEX. CONST. art. III, § 21. This immunity prevents any judicial interference with a legislator’s exercise of his or her legislative duties.

The trial court also clearly erred in finding that the Relators wrongly interpreted the Texas Constitution and that Plaintiffs established irreparable injury. The Texas Constitution and House Rules clearly and unambiguously permit each House of the Legislature to compel the attendance of its members by civilly arresting them and transporting them back to the Capitol. That interpretation is confirmed by multiple long-standing and unchallenged decisions from this Court and the United States Supreme Court. The Relators also have no adequate means for obtaining relief through

¹ The Speaker is required to be a Member of the House of Representatives. TEX. CONST. art. III, § 9(b).

the regular appellate process: the trial court's order robs the House of any ability to obtain a quorum until at least August 20 (the date of the hearing on the temporary restraining order), which is nearly half of the way through the current special session that must adjourn sine die on September 5, 2021.

STATEMENT OF FACTS

I. Plaintiffs Have Denied The House A Quorum For Two Special Sessions Of The Legislature.

On July 7, 2021, Relator Abbott called a special session of the 87th Legislature to convene on July 8. (MR.032–033.) The Governor specified several items that the Legislature had been unable to complete during the recently concluded Regular Session for its consideration, including bail reform, election integrity, border security, relief for retired teachers, and more. (MR.032–033.)

On July 12, 2021, 56 state representatives elected as Democrats publicly departed for Washington, D.C., with the stated purpose of denying the House of Representatives its required quorum and thereby thwart the ability of the Legislature to consider those matters submitted for its consideration by Relator Abbot and pass laws favored by a majority of Texas's elected legislators (MR.009–010.) Patrick Svitek & Cassandra Pollock, *Texas House Republicans Vote to Track Down Absent Democrats and Arrest Them If Necessary*, Tex. Trib. (July 13, 2021),

<https://www.texastribune.org/2021/07/13/texas-democrats-walkout-voting-bill-arrest/>.

When the House convened on July 13, 2021, it did not have a quorum. (MR.039). Because the Texas Constitution and House Rules permit each House of the Legislature to compel the attendance of absent Members (TEX. CONST. art. III, § 10, App'x at 87), a majority of then-present Members voted on the same day to direct the Sergeant-at-Arms to civilly arrest absent Members and bring them back to the Capitol so that the business of the Legislature could finally proceed. (MR.40–041.) On July 15, 2021, pursuant to that authority and House Rule 1, Section 13, the Speaker of the House issued a warrant directing that the Sergeant-at-Arms “or any officer appointed by him” to apprehend one of the absent legislators, Representative Phillip Cortez. (MR.054.)

II. Plaintiffs Seek A Temporary Restraining Order After Governor Abbott Calls A Second Special Session Of The Legislature.

The First Called Session was required to adjourn sine die on August 7. *See* TEX. CONST. art. III, § 8. Without much progress on debating and voting on legislation due to lack of a quorum in the House, on August 5, Governor Abbott issued a proclamation convening a second special session to commence on August 7. (MR.034–037.) When the House convened for the

Second Called Session on August 7, 2021, it again did not have a quorum. 87 H. Jour. 2d C.S. 1 (2021).

Rather than accept well-established constitutional authority of the House to compel their attendance, on August 8, Plaintiffs sued, seeking *ex parte* temporary and permanent injunctive relief and a declaration that Governor Abbott, Speaker Phelan, and the State of Texas have no authority to compel them to attend the special session by civilly arresting them. (MR.04–027.) At 8:14 p.m. on Sunday August 8, the 261st Judicial District² issued an *ex parte* TRO enjoining Relators from “[d]etaining, confining, or otherwise restricting a Texas House Democrat’s movement without his or her consent;” issuing “warrants or other instruments” so commanding; or commanding “the Texas House sergeant-at-arms, officers appointed by the Texas House sergeant-at-arms, Department of Public Safety, Texas Rangers, Texas Highway Patrol Officers, Capitol Police Officers, or other law enforcement officials” from carrying out such an order. (MR.001–003.) The trial court has scheduled the hearing on Plaintiffs’ petition for temporary

² As noted in the August 9, 2021 filings, the trial court’s order was issued by the District Court for the 261st Judicial District, Travis County, over which the Honorable Lora Livingston presides. The order was apparently signed by the Honorable Brad Urrutia of the District Court for the 450th Judicial District, Travis County. (MR.001-003.) Out of an abundance of caution, this Petition seeks relief from both Respondents.

injunctive relief for August 20—more than halfway into the current special session, which must adjourn sine die on September 5, 2021. (MR.002.)

On August 9, 2021, a Petition for Writ of Mandamus was filed in this Court seeking relief from the trial court’s temporary restraining order. Relator Phelan now files this Amended Petition for Writ of Mandamus.

ARGUMENT

“In so far as it is restrained neither by the Constitution of the United States nor by that of the State, the Legislature represents the sovereign will of the people, and has the power to act at its discretion upon any subject of legislation.” *McKenzie v. Baker*, 88 Tex. 669, 677 (Tex. 1895). Due to legislators’ unique position “among the people,” the “nature of their public trust implies a personal influence among the people, and that they are more immediately the confidential guardians of the rights and liberties of the people.” *The Federalist No. 49*, at 275 (James Madison) (J.R. Pole, ed., 2005).

When a trial court interferes with the Speaker’s exercise of his duties under the Constitution and the House Rules of Procedure, it interferes with the House’s ability to represent the will of the people and their vesting of constitutional authority in the House to restore a quorum as necessary to consider and enact legislation.

The Speaker joins and adopts sections I(A), I(C), I(D), and II of the Petition for Writ of Mandamus filed in this original proceeding on August 9, 2021. Because of his and the House’s unique constitutional roles, the Speaker urges this Court to consider the following argument and authorities:

I. Standard Of Review.

Mandamus relief is available where the trial court’s error “constitute[s] a clear abuse of discretion” and the relator lacks “an adequate remedy by appeal.” *Walker v. Packer*, 827 S.W.2d 833, 839 (Tex. 1992). Both elements are easily met here. “A trial court has no ‘discretion’ in determining what the law is or applying the law to the facts.” *Id.* at 840.

II. The Trial Court Clearly Abused Its Discretion By Enjoining The Speaker—And By Extension The House Of Representatives—From Obtaining A Quorum.

The trial court’s entry of an *ex parte* temporary restraining order was a clear abuse of discretion, and this Court should compel the trial court to reverse the order with instructions for the trial court to dismiss the case. Relators are immune from suit for the acts complained of in the petition. Finally, over 150 years of constitutional text, history, and precedent confirms that the House has the authority to compel the attendance of absent members by civil arrest.

A. *Relators are immune from suit.*

The Speaker's absolute legislative immunity prohibits the trial court from forcing the Speaker to defend against Plaintiffs' Original Verified Petition and Application for Temporary and Permanent Injunctive Relief, which challenges the Speaker's performance of those legislative acts necessary to the House's exercise of its constitutional powers. Indeed, Real Parties do not (and cannot) challenge the fact that the relevant actions of the Speaker are legislative functions.

This Court has repeatedly and steadfastly affirmed that "Texas and federal courts have recognized that individuals acting in a legislative capacity are immune from liability for those actions." *In re Perry*, 60 S.W.3d 857, 859 (Tex. 2001). The "doctrine generally shields legislative actors not only from liability, but also from being required to testify about their legislative activities." *Id.* at 860. This protection serves two important public policies. First, it prevents the burden and threat of lawsuits from pressuring legislators in a manner that might "skew their decisions." *Id.* at 859. Second, it prevents judicial intrusion into the intentions and communications of legislators. *Id.* at 860–861.

Subjecting the Speaker to the trial court's inquiries into the exercise of constitutionally granted authority, which will inevitably require discovery

and evidence that will burden the Speaker and intrude upon his decision-making process, will defeat these public policies and the Texas Constitution's protection of the legislative process.

The Speech and Debate Clause is a cornerstone of legislative immunity. *Id.* 859. This clause mandates that “[n]o member shall be questioned in any other place for words spoken in debate in either House.” TEX. CONST. art. III, § 21. Courts applying this clause should not “limit it to words spoken in debate,” but rather extend it to “things generally done in a session of the house by one of its members in relation to the business before it.” *Canfield v. Gresham*, 82 Tex. 10, 17 (1891).

Camacho v. Samaniego, 954 S.W.2d 811 (Tex. App.—El Paso 1997, pet. denied) further describes legislative immunity's broad protection against any deterrent of the discharge of a legislator's duties:

In *Tenney v. Brandhove*, 341 U.S. 367, 376–77, 71 S.Ct. 783, 788, 95 L.Ed. 1019, 1027–28 (1951), the United States Supreme Court held that, under the common law as well as the Speech or Debate Clause to the United States Constitution, state legislators, “acting in the sphere of legitimate legislative activity” were “immune from deterrents to the uninhibited discharge of their legislative duty,” like members of Congress. With few exceptions, legislative immunity is absolute, protecting legislators from litigation resulting from decisions made in a legislative capacity, and from the burden of defending themselves in such litigation.

Id. at 823.³

Camacho rightfully applied the federal decision in *Tenney* because Texas courts look to the Supreme Court of the United States for guidance on the scope of legislative immunity. *See In re Perry*, 60 S.W.3d at 859–62 (Tex. 2001) (relying on numerous legislative-immunity decisions of the Supreme Court of the United States); *Camacho*, 954 S.W. 2d at 823 (“we will rely on federal authorities”); *Bowles v. Clipp*, 920 S.W.2d 752, 758 (Tex. App.—Dallas 1996, writ denied) (“an examination of federal immunity law is instructive”).

In *Canfield*, the plaintiff alleged that legislators unlawfully and maliciously arrested and imprisoned him. *Id.* at 11. This Court applied the Speech and Debate clause to protect the legislators because:

The house had unquestionably the right to determine whether or not the acts of plaintiff were an obstruction to its proceedings within the meaning of the constitution, and, having so determined, to cause him to be imprisoned as he was.

The Court held that the House possessed this unquestionable authority because the Texas Constitution empowers the House to imprison non-

³ The Plaintiffs, by contrast, are arguably *not* acting in a legislative capacity as they endeavor to impede the legislative process by their continued absence in seeking to avoid the command of the House to return and resume their legislative responsibilities. The Court does not need to make a determination of this in order to grant Relator Phelan’s requested relief.

members for obstructing any House proceeding. Similarly, in the case *sub judice*, the trial court erred by questioning the Speaker's exercise of his constitutionally granted right to determine whether and how to "compel the attendance of absent members." TEX. CONST. art. III, § 10. The Constitution specifically entrusts this power to the "House," *id.*, further emphasizing that exercising this power is acting in a "legislative capacity" and is protected by legislative immunity. In addition, legislators' creation and use of a House Rule of Procedure is a quintessential action in their "legislative capacity."

In *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150 (Tex. 2004), this Honorable Court again affirmed the strong protections of legislative immunity and it provided an example of the wide scope of activities protected by legislative immunity. In *Joe*, the plaintiff alleged that the defendant, who was both a legislator on a city council and a partner in a law firm that represented the plaintiff, breached his fiduciary duty to the plaintiff by supporting an ordinance adverse to the plaintiff's interests. This Court held "that the lawyer-legislator is immune from liability for any conflict of interest arising from his support of, preparation for, and vote on the ordinance." *Id.* at 154.

The trial court vitiated the Speaker's absolute legislative immunity, contrary to the decisions described above, by preventing him from

performing the legislative acts under the Constitution and the House Rules of Procedure that are authorized by the House of Representatives under its constitutional authority to compel the attendance of absent members.

B. Additional adopted arguments in the August 9, 2021 petition require reversal.

Sections I(A), I(C), I(D), and II of the Petition for Writ of Mandamus filed in this original proceeding on August 9, 2021, which this petition incorporates by reference, provide additional reasons that the trial court's order must be reversed.

PRAYER

Relator Phelan respectfully requests that this Court grant its Petition for Writ of Mandamus and compel the trial court to reverse the temporary restraining order consistent with the principles of the Constitution and the rule of law that underlie our great state. Relator Phelan further requests that this Court grant such further relief to which he may justly be entitled at law or equity.

Respectfully submitted.

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RULE 52.3(J) CERTIFICATION

In compliance with Rule 52.3(j) of the Texas Rules of Appellate Procedure, I certify that I have reviewed the petition for writ of mandamus and have concluded that every factual statement in the petition is supported by competent evidence included in the appendix or record.

/s/ Dale Wainwright
Dale Wainwright

CERTIFICATE OF COMPLIANCE

This brief complies with the length limitations of TEX. R. APP. P. 9.4(i)(3) because it consists of 2,557 words as determined by Microsoft Word Count, excluding the parts of the brief exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Dale Wainwright
Dale Wainwright

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was served on counsel of record by using the Court’s e-filing system on the 11th day of August, 2021, addressed as follows:

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APPENDIX

Tab A	Temporary Restraining Order
Tab B	TEX. CONST. art. III, § 10
Tab C	House Rule 5

TAB A

August 09, 2021, 09:08:33

At _____
Velva L. Price, District Clerk

CAUSE NO. D-1-GN-21-003760

REP. GINA HINOJOSA,	§	IN THE DISTRICT COURT OF
REP. ALMA A. ALLEN,	§	
REP. MICHELLE BECKLEY,	§	
REP. JASMINE CROCKETT,	§	
REP. JOE DESHOTEL,	§	
REP. BARBARA GERVIN-HAWKINS,	§	
REP. VIKKI GOODWIN,	§	
REP. CELIA ISRAEL,	§	
REP. RAY LOPEZ,	§	
REP. ARMANDO "MANDO" MARTINEZ,	§	
REP. TREY MARTINEZ FISCHER,	§	
REP. INA MINJAREZ,	§	
REP. CHRISTINA MORALES,	§	
REP. MARY ANN PEREZ,	§	
REP. ANA-MARIA RAMOS,	§	
REP. RICHARD PEÑA RAYMOND,	§	
REP. RON REYNOLDS,	§	
REP. EDDIE RODRIGUEZ,	§	
REP. RAMON ROMERO, JR.,	§	
	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	TRAVIS COUNTY, TEXAS
	§	
GREG ABBOTT, in his official capacity as	§	
Governor of the State of Texas, and	§	
MATTHEW McDADE PHELAN,	§	
in his official capacity as the Speaker of the	§	
Texas House of Representatives, and	§	
the STATE OF TEXAS.	§	
	§	
<i>Defendants.</i>	§	261ST
	§	_____ JUDICIAL DISTRICT

TEMPORARY RESTRAINING ORDER

On this date, the Court heard Plaintiffs’ application for a temporary restraining order. After considering the pleadings, affidavits, and arguments of counsel, the Court GRANTS the application for a temporary restraining order *ex parte* and ORDERS as follows:

1. The Court finds that it clearly appears from the facts set forth in Plaintiffs’ Original Petition and the affidavits and evidence attached thereto that Defendants have erroneously interpreted Texas law and legislative rules to permit the detention, confinement, or other restriction of members of the Texas House of Representatives within the State of Texas in response to a call for quorum, and that, unless Defendants are immediately restrained as

set forth below, Plaintiffs will suffer imminent and irreparable harm by either the loss of liberty or the loss of real and personal property, personal, professional, and political relationships with family, friends, staff, and constituents, and mental anguish of being separated from home.

2. The Court further finds that immediate and irreparable injury, loss, or damage will result to Plaintiffs before notice of a temporary restraining order application can be served and hearing had thereon. Specifically, Defendants announced on Saturday, August 7, 2021, that the next Special Session in which Plaintiffs would be purportedly require to attend will begin on Monday, August 9, 2021, but, as State government workers, Defendants' counsel are presumably unavailable to receive notice or appear at a hearing on the only date between those key dates.
3. The Court RESTRAINS defendants the State of Texas, Governor Greg Abbott, and Speaker of the House Matthew McDade "Dade" Phelan from:
 - a. Detaining, confining, or otherwise restricting a Texas House Democrat's movement without his or her consent so as to interfere substantially with his or her liberty within the State of Texas under the alleged authority of Article III, Section 10 of the Texas Constitution, House Rule 5, Section 8, or a Call to the House passed on or after July13, 2021;
 - b. Issuing any warrants or other instruments commanding the detention, confinement, or other restriction of a Texas House Democrat's movement without his or her consent so as to interfere substantially with his or her liberty within the State of Texas under the alleged authority of Article III, Section 10 of the Texas Constitution, House Rule 5, Section 8, or a Call to the House passed on or after July13, 2021; and
 - c. Commanding the Texas House sergeant-at-arms, officers appointed by the Texas House sergeant-at-arms, Department of Public Safety, Texas Rangers, Texas Highway Patrol Officers, Capitol Police Officers, or other law enforcement officials to detain, confine, or otherwise restrict a Texas House Representative's movement without his or her consent so as to interfere substantially with his or her liberty within the State of Texas under the alleged authority of Article III, Section 10 of the Texas Constitution, House Rule 5, Section 8, or a Call to the House passed on or after July13, 2021.
4. The Court ORDERS the Clerk to issue notice to defendants the State of Texas by and through the Attorney General, Governor Greg Abbott, and Speaker of the House Matthew McDade "Dade" Phelan to show cause why a temporary injunction should not be issued against them, and that the hearing on Plaintiffs' application for temporary injunction is set for:

August 20 _____, 2021 at _____ 2:00 AM / **PM**

The purpose of the hearing will be to determine whether the temporary restraining order should be made a temporary injunction pending a full trial on the merits.

5. The Court finds that the temporary restraining order or temporary injunction is against the State and officers of the State in their governmental capacity and that Defendants have no pecuniary interest in the suit and no money damages can be shown; nonetheless, the Court sets bond at: \$1.00.
6. This Order is binding upon all of Defendants' agents, servants, employees, attorneys, and all persons in active concert or participation with Defendants who receive actual notice of this order by personal service or otherwise.
7. This Order expires within fourteen (14) days unless extended as permitted by Tex. R. Civ. P. 680.

SIGNED on August 8, 2021 at 8:14PM.



JUDGE PRESIDING

TAB B

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

Vernon's Ann.Texas Const. Art. 3, § 10

§ 10. Quorum; adjournments from day to day; compelling attendance

Currentness

Sec. 10. Two-thirds of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Vernon's Ann. Texas Const. Art. 3, § 10, TX CONST Art. 3, § 10

Current through legislation effective June 18, 2021, of the 2021 Regular Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

End of Document

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TAB C

House Rules Manual

House Rules of Procedure
Housekeeping Resolution
Government Code

87th Legislature



Rule 5

Floor Procedure

Chapter A. Quorum and Attendance

Sec. 1. Quorum. Two-thirds of the house shall constitute a quorum to do business.

CROSS-REFERENCE

Tex. Const. Art. III, § 10—Constitutional rule.

Sec. 2. Roll Calls. On every roll call or registration, the names of the members shall be called or listed, as the case may be, alphabetically by surname, except when two or more have the same surname, in which case the initials of the members shall be added.

Sec. 3. Leave of Absence. (a) No member shall be absent from the sessions of the house without leave, and no member shall be excused on his or her own motion.

(b) A leave of absence may be granted by a majority vote of the house and may be revoked at any time by a similar vote.

(c) Any member granted a leave of absence due to a meeting of a committee or conference committee that has authority to meet while the house is in session shall be so designated on each roll call or registration for which that member is excused.

Sec. 4. Failure to Answer Roll Call. Any member who is present and fails or refuses to record on a roll call after being requested to do so by the speaker shall be recorded as present by the speaker and shall be counted for the purpose of making a quorum.

Sec. 5. Point of Order of “No Quorum”. (a) The point of order of “No Quorum” shall not be accepted by the chair if the last roll call showed the presence of a quorum, provided the last roll call was taken within two hours of the time the point of order is raised.

(b) If the last roll call was taken more than two hours before the point of order is raised, it shall be in order for the member who raised the point of order to request a roll call. Such a request must be seconded by 25 members. If the request for a roll call is properly seconded, the chair shall order a roll call.

(c) Once a point of order has been made that a quorum is not present, it may not be withdrawn after the absence of a quorum has been ascertained and announced.

Rule 5, Floor Procedure Sec. 6

CONGRESSIONAL PRECEDENT

Applicability of Restrictions Under General Parliamentary Law.

— Before the adoption of rules, a member may make a point of order of no quorum based on the Constitutional rule because the House rule restricting its availability is not yet applicable. Wickham ch. 5, § 5.3.

Sec. 6. Motions In Order When Quorum Not Present. If a registration or record vote reveals that a quorum is not present, only a motion to adjourn or a motion for a call of the house and the motions incidental thereto shall be in order.

CROSS-REFERENCE

Rule 7, § 11—Adjourning with less than a quorum.

Sec. 7. Motion for Call of the House. It shall be in order to move a call of the house at any time to secure and maintain a quorum for one of the following purposes:

- (1) for the consideration of a specific bill, resolution, motion, or other measure;
- (2) for the consideration of any designated class of bills; or
- (3) for a definite period of time.

Motions for, and incidental to, a call of the house are not debatable.

CROSS-REFERENCES

Tex. Const. Art. III, § 12—Compelling attendance of absent members.

Rule 5, § 57—Motion for a call of the house during verification of a vote.

EXPLANATORY NOTE

The motion for a call of the house to secure a quorum is in order under general parliamentary law as an exercise of the constitutional power to compel the attendance of absent members. [2021]

HOUSE PRECEDENTS

1. *Bill Considered Under Call of the House Made a Special Order.* — In the 51st Legislature, the Speaker, Mr. Manford, held that when a bill was being considered under a call of the house, pursuant to (1) above, a motion to set the bill as a special order for another time was in order. 51 Tex. Legis. Man. 212 (1949).

2. *Illustration of a “Class of Bills.”* — The house was considering H.B. 231. Mr. Pool moved a call of the house until House Bills 231, 232, 233, and 238 were disposed of. Mr. Hale raised a point of order that such was not a valid motion in that it encompassed four separate bills that did not constitute a “class” under Section 2(b) of Rule XV [now this section].

The speaker, Mr. Carr, overruled the point of order, because all four bills dealt with the same general subject matter, i.e., segregation in the public schools, and accordingly it was his opinion that they constituted a proper “class of bills” within the meaning of this section. 55 H. Jour. 1527 (1957).

CONGRESSIONAL PRECEDENTS

Call of the House Before the Adoption of Rules. — A call of the House is in order both under the general parliamentary law and the Constitution. 4 Hinds § 2981; Deschler ch. 1, § 9.8

Interrupting a Call of the House. — The Speaker may interrupt a call of the House to administer the oath to a Member-elect. Wickham ch. 2, § 3.16.

Sec. 8. Securing a Quorum. When a call of the house is moved for one of the above purposes and seconded by 15 members (of whom the speaker may be one) and ordered by a majority vote, the main entrance to the hall and all other doors leading out of the hall shall be locked and no member permitted to leave the house without the written permission of the speaker. The names of members present shall be recorded. All absentees for whom no sufficient excuse is made may, by order of a majority of those present, be sent for and arrested, wherever they may be found, by the sergeant-at-arms or an officer appointed by the sergeant-at-arms for that purpose, and their attendance shall be secured and retained. The house shall determine on what conditions they shall be discharged. Members who voluntarily appear shall, unless the house otherwise directs, be immediately admitted to the hall of the house and shall report their names to the clerk to be entered in the journal as present.

Until a quorum appears, should the roll call fail to show one present, no business shall be transacted, except to compel the attendance of absent members or to adjourn. It shall not be in order to recess under a call of the house.

CROSS-REFERENCES

Tex. Const. Art. III, § 12—Compelling attendance of absent members.
Rule 7, § 11—Compelling the attendance of absent members.

EXPLANATORY NOTE

The procedure outlined in this section is mandatory after a call of the house is “moved,” a motion to recess not being acceptable between the “seconding” and the “ordering” vote on the call. However, due to its high priority, a motion to adjourn could come between, or even ahead of, the “seconding” procedure. [1949]

HOUSE PRECEDENTS

1. *No Substitute for a Call of the House.* — In the 51st Legislature, the Speaker, Mr. Manford, held that there is no substitute for a call of the house, i.e., a different time or purpose cannot be substituted. 51 Tex. Legis. Man. 213 (1949).

2. *Call of the House in Effect Pending Verification.* — In the 51st Legislature, the Speaker, Mr. Manford, as the result of a 65 to 64 vote for a call of the house, ordered the doors of the house closed immediately despite a request for verification which he accepted and allowed. 51 Tex. Legis. Man. 213 (1949). [The verification sustained the announced vote.]

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