



# Brazil & Dunn LLP

Attorneys at Law

## Scott Brazil

Member, American Board of  
Trial Advocates  
Board Certified Civil Trial  
Board Certified Personal Injury Trial Law  
Texas Board of Legal Specialization

## Chad W. Dunn

Member, American Board of  
Trial Advocates  
Board Certified Personal Injury Trial Law  
Texas Board of Legal Specialization

4407 Bee Caves Rd  
Suite 111  
Austin, Texas 78746  
512/717-9822 office  
512/515-9355 fax

Houston • Miami

[www.BrazilAndDunn.com](http://www.BrazilAndDunn.com)

July 14, 2021

## Via e-filing

Blake A. Hawthorne  
Clerk, Supreme Court of Texas

**Re: No. 21-0538, *In re Turner, et al.***

Dear Mr. Hawthorne:

Relators write to respond to Respondents' letter of July 13, 2021. Governor Abbott's veto violates the constitutional guarantee of separation of powers by effectively abolishing a co-equal branch of government. The recent events in the Texas Legislature do not change that fact. Rather, they confirm the need for this Court to decide whether Governor Abbott may threaten the Legislature's existence—and hold hostage the more than 2,000 public servants who work for it—as a means of achieving his legislative objectives.

Governor Abbott's decision to place Article X funding on the special session call is another attempt to usurp the Legislature's authority over lawmaking by forcing the Legislature to pass his preferred laws. The Governor has not indicated that he is willing to sign an appropriation into law, and there is good reason to think he will not unless and until the Legis-

lature has first fulfilled his other agenda items.<sup>1</sup> Predicating the continuing existence of the Legislature on its willingness to accede to the Governor’s agenda continues to transgress the separation of powers, setting a precedent for the Governor to do the same to the judiciary or other offices. Pet. at 16–17, 34. Governor Abbott may not seek to “indirectly control” the actions of a co-equal branch of government in this way. *Langever v. Miller*, 76 S.W.2d 1025, 1036 (Tex. 1934).

Respondents attempt to blame the victim by putting the onus on the Legislature to rectify Governor Abbott’s unconstitutional conduct. As Relators explained in their reply (at 5–6), it is the Governor’s unconstitutional veto that is harming Relators by defunding the Legislature—not the subsequent decision by some Members to push back on this unprecedented break in the constitutional structure by breaking quorum. The Legislature does not bear the burden of remedying the Governor’s unconstitutional action, particularly when that supposed “remedy”—coerced legislative action—would exacerbate the injury itself. In all events, the fact that elected officials are using the constitutional tools available to them to serve their constituents does not justify the Governor’s injury to state employees who have no say in that decision whatsoever.

Importantly as well, the decision of some Members to break quorum provides no basis for sustaining the Governor’s veto. “Our Constitution, section 11, art. 3, expressly gives each house the right, power, and authority to determine the rules of its own proceedings.” *Teem v. State*, 183 S.W. 1144, 1151 (Tex. Crim. App. 1916). Exercising the right to defeat a quorum is an appropriate tool undertaken in accordance with the Constitution and the House rules, *see* Tex. Const. art. III, § 10; Tex. R. H.R. 5(1), (8) (2021). Enforcement of those rules is constitutionally

---

<sup>1</sup> As Speaker of the House Dade Phelan explained: “We could pass Article X to the governor’s, that doesn’t mean, he’s going to sign it. I mean, he put other items on the call for a reason, and so he expects us to deliver on many of those items.” Reena Diamante, *Texas House Speaker Dade Phelan Addresses Special Session Agenda, Democrats’ Demands*, Spectrum News 1 (July 8, 2021), <https://spectrumlocalnews.com/tx/south-texas-el-paso/news/2021/07/08/texas-house-speaker-dade-phelan-addresses-special-session-agenda--democrats--demands>.

delegated to the House alone. *See id.* Indeed, quorum breaking has been used multiple times over the last two centuries, in multiple states as well as in Congress, and by Republicans as well as Democrats.<sup>2</sup>

Finally, neither the political question doctrine nor the rules of equity preclude the Court from reviewing the Governor’s unconstitutional action. Respondents characterize this as a “political dispute,” Resp. Letter at 2, but the political question doctrine “depends not at all on whether an issue is political—few statutory and constitutional issues are not at least in some sense political.” *Am. K-9 Detection Servs., LLC v. Freeman*, 556 S.W.3d 246, 253 (Tex. 2018). The Court “appropriately exercises” its authority to determine the “constitutionality” of an official act, particularly where one branch is “aggrandizing its power at the expense of another branch.” *Zivotofsky v. Clinton*, 566 U.S. 189, 197 (2012) (quotation omitted). The Governor’s veto of the Legislature’s funding presents such a profound concern under the Texas Constitution that former Speakers of the House from both parties and a former Lieutenant Governor have urged this Court to review the Governor’s attempt to “circumvent democracy.” Amicus at 2. As to the state’s unclean hands argument, it violates neither “good faith” nor “conscience” for legislators to refuse to participate in a special session under coercion, *Westerman v. Mims*, 227 S.W. 178, 182 (Tex. 1921), and that argument does not apply to the Legislative Employee Relators at all.

The state’s letter confirms the importance and the urgency of this case. The Court should therefore order full briefing to allow these important questions to be addressed more thoroughly.

---

<sup>2</sup> *See, e.g.*, Peverill Squire, *Quorum Exploitation in the American Legislative Experience*, 27 Stud. Am. Pol. Dev. 142, 153–59 & tbl. 3 (2013); “A Quorum To Do Business,” Cornell Legal Info. Inst., <https://www.law.cornell.edu/constitution-conan/article-1/section-5/clause-1-4/a-quorum-to-do-business> (last visited July 13, 2021).

Respectfully submitted,

/s/ Jim Dunnam

Jim Dunnam  
(State Bar No. 06258010)  
Andrea Mehta  
(State Bar No. 24078992)  
Dunnam & Dunnam, LLP  
4125 West Waco Drive  
Waco, TX 76710  
(254) 753-6437  
jimdunnam@dunnamlaw.com  
andreamehtha@dunnamlaw.com

John T. Lewis  
(State Bar No. 24095074)  
Skye L. Perryman  
(State Bar No. 24060411)  
Jessica Anne Morton\*  
Sean A. Lev\*  
Democracy Forward Foundation  
655 15th Street NW, Suite 800  
Washington, DC 20005  
(202) 448-9090  
jlewis@democracyforward.org  
sperryman@democracyforward.org  
jmorton@democracyforward.org  
slev@democracyforward.org

\* Admitted *pro hac vice*

*Counsel for Legislative Employee  
Relators*

/s/ Chad W. Dunn

Chad W. Dunn  
(State Bar No. 24036507)  
K. Scott Brazil  
(State Bar No. 02934050)  
Brazil & Dunn, LLP  
4407 Bee Caves Road, Suite 111  
Austin, TX 78746  
(512) 717-9822  
chad@brazilanddunn.com  
scott@brazilanddunn.com

Kevin E. Vickers  
(State Bar No. 24079517)  
Brady & Peavey, PC  
1122 Colorado Street, Suite 110  
Austin, TX 78701  
(512) 387-5910  
kvickers@bradypeavey.com  
  
*Counsel for Legislative Member and  
Caucus Relators*

## **CERTIFICATE OF SERVICE**

I certify that on July 14, 2021, this document was served via e-File upon counsel of record in this proceeding.

/s/ Chad W. Dunn  
Chad W. Dunn

## **CERTIFICATE OF COMPLIANCE**

I certify that per Microsoft Word, this document contains 817 words, excluding the portions of the document exempted by Texas Rule of Appellate Procedure 9.4(i)(1).

This response also complies with the typeface requirements of Texas Rule of Appellate Procedure 9.4(e) because it has been prepared in a proportionally spaced typeface in 14-point font.

/s/ Chad W. Dunn  
Chad W. Dunn