No. 21-0538

In the Supreme Court of Texas

IN RE CHRIS TURNER, IN HIS CAPACITY AS A MEMBER OF THE TEXAS HOUSE OF REPRESENTATIVES AND HIS CAPACITY AS CHAIR OF THE HOUSE DEMOCRATIC CAUCUS; TEXAS AFL-CIO; HOUSE DEMOCRATIC CAUCUS; MEXICAN AMERICAN LEGISLATIVE CAUCUS; TEXAS LEGISLATIVE BLACK CAUCUS; LEGISLATIVE STUDY GROUP; THE FOLLOWING IN THEIR CAPACITIES AS MEMBERS OF THE TEXAS HOUSE OF REPRESENTATIVES: ALMA ALLEN, RAFAEL ANCHÍA, MICHELLE BECKLEY, DIEGO BERNAL, RHETTA BOWERS, JOHN BUCY, ELIZABETH CAMPOS, TERRY CANALES, SHERYL COLE, GARNET COLEMAN, NICOLE COLLIER, PHILIP CORTEZ, JASMINE CROCKETT, YVONNE DAVIS, JOE DESHOTEL, ALEX DOMINGUEZ, HAROLD DUTTON, JR., ART FIERRO, BARBARA GERVIN-HAWKINS, JESSICA GONZÁLEZ, MARY GONZÁLEZ, VIKKI GOODWIN, BOBBY GUERRA, RYAN GUILLEN, ANA HERNANDEZ, GINA HINOJOSA, DONNA HOWARD, CELIA ISRAEL, ANN JOHNSON, JARVIS JOHNSON, JULIE JOHNSON, TRACY KING, OSCAR LONGORIA, RAY LOPEZ, EDDIE LUCIO III, ARMANDO MARTINEZ, TREY MARTINEZ FISCHER, TERRY MEZA, INA MINJAREZ, JOE MOODY, CHRISTINA MORALES, EDDIE MORALES, PENNY MORALES SHAW, SERGIO MUÑOZ, JR., VICTORIA NEAVE, CLAUDIA ORDAZ PEREZ, EVELINA ORTEGA, LEO PACHECO, MARY ANN PEREZ, ANA-MARIA RAMOS, RICHARD RAYMOND, RON REYNOLDS, EDDIE RODRIGUEZ, RAMON ROMERO, JR., TONI ROSE, JON ROSENTHAL, CARL SHERMAN, SR., JAMES TALARICO, SHAWN THIERRY, SENFRONIA THOMPSON, JOHN TURNER, HUBERT VO, ARMANDO WALLE, GENE WU, AND ERIN ZWIENER; AND THE FOLLOWING IN THEIR CAPACITIES AS LEGISLATIVE EMPLOYEES: KIMBERLY PAIGE BUFKIN, MICHELLE CASTILLO, RACHEL PIOTRZKOWSKI, AND DONOVON RODRIGUEZ,
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IDENTITY AND INTEREST OF AMICUS CURIAE

This brief is tendered on behalf of Law Professors and Current and Former Members of the Texas House of Representatives, Senate, and Judiciary, and has been prepared pro bono by undersigned counsel at Hogan Lovells US LLP.

Amici include professors who teach and write about constitutional law, separation of powers, and election law; and current and former office holders in Texas state government. Some *amici* support Governor Abbott, while others do not. But all *amici* share a strong interest in ensuring that the Court's decision in this case upholds the separation of powers principles found in Texas's Constitution. And all *amici* agree that it undermines the separation of powers for the Executive Branch in Texas to veto the entire budget used to fund the State's Legislative Branch. The separation of powers safeguards the rights of the people of Texas, and *amici* have a strong interest in preventing Executive Branch overreach from degrading the Legislature's role in Texas's system of separated government powers. Each *amici* firmly believes that one branch of government cannot aggrandize its own power by eliminating the ability of another branch of government to operate.

Specifically, *amici* include:

Mimi Marziani is an adjunct professor of law at the University of Texas School of Law, where she teaches Election Law and Policy.[1]

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Harold H. Bruff is the Nicholas Rosenbaum Professor of Law at the University of Colorado Law School.

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INTRODUCTION

On June 18, 2021, Governor Abbott took unprecedented action: he vetoed all funding for the Legislature contained in the appropriations bill the Legislature passed for 2022-2023, as well as the provision of the bill providing for unexpended balances to carry over to the next biennium. This includes all funding for the Senate, the House, the thousands of staff who work in those bodies, and numerous nonpartisan offices that are funded through Article X. The reason the Governor gave

for this veto was that the Legislature had not passed legislation that he wanted passed.

The petition for writ of mandamus in this case raises a separation-of-powers question: Does the State's constitution give the Governor, as head of the executive branch, authority to impede the functioning of the legislative branch by eliminating all funding for two fiscal years for that co-equal branch of government? The answer is no. The Texas constitution prohibits any of the State's "three distinct departments" from "exercis[ing] any power properly attached to either of the others," Tex. Const. art. II, sec. 1, based on a deep-seated belief that "one of the greatest threats to liberty is the accumulation of excessive power in a single branch of government," *Armadillo Bail Bonds v. State*, 802 S.W.2d 237, 239 (Tex. Crim. App. 1990) (en banc).

Amici include both legal scholars who teach, study, and write about state constitutions and separation of power, and current and former office holders in the Texas state government who are well-versed in how the Texas Constitution's separation-of-powers clause limits the reach of each branch of the State's government. They submit this amicus brief to underscore for the Court Texas's longstanding commitment to separations of powers as a rule of law. This founding principle reflects the framers' understanding that the best way to safeguard the fundamental rights of every Texan was to establish a governing system that diffused

and divided power in order to ensure that "no single branch ever anoint[ed] itself with so much power that it [could] dominate the other branches and, eventually, the people." *In re Allcat Claims Serv., L.P.*, 356 S.W.3d 455, 490 (Tex. 2011) (Willett, J., concurring in part and dissenting in part).

When one branch of government unduly interferes with the effective exercise of another branch's constitutionally defined powers, the interfering branch's consolidation of power threatens the stability of the democratic system. Put simply, the Governor's unprecedented line-item veto of Article X of SB 1 runs afoul of a principle this Court recognized more than a century ago: none of the three branches of government in Texas "can enlarge, restrict, or destroy the powers of any" other branch. *Lytle v. Halff*, 12 S.W. 610, 611 (Tex. 1889). Vetoing the budget that pays legislators, legislative staff, and legislative agencies does just that. Mandamus is warranted.

ARGUMENT

I. The Texas Constitution, Informed by the State's Unique History, Vigorously Protects the Separation of Powers.

The separation of powers is the lodestar of the Texas Constitution. The principle itself has a distinguished pedigree. "No political truth is certainly of greater intrinsic value" than the "maxim[ ] that the legislative, executive, and judiciary departments ought to be separate and distinct." The Federalist No. 47 (James Madison) (Univ. of Chi. Press ed., 1977). Our country's founders considered the

separation of powers a structural support for a fledgling democracy. And the Texas Constitution—a product of Texas' unique history—took that fundamental precept and made it even stronger. Indeed, the division of power in government is "[s]o important" that it appeared in the "first section of the first article of the Constitution of the Republic of Texas." *Langever v. Miller*, 76 S.W.2d 1025, 1035 (Tex. 1934).[2] And because the separation of powers is "'the absolutely central guarantee of a just Government,'" exceptions to that constitutional mandate are "never to be implied *in the least*." *Fin. Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 569-570 (Tex. 2013) (quoting *Morrison v. Olson*, 487 U.S. 654, 697 (1988) (Scalia, J., dissenting)) (emphasis added).

Historical context is instructive in understanding Texas' special emphasis on the separation of powers. The current Constitution—ratified in 1876—came about during a tumultuous time for the State and the nation. At the time, Texas faced "rampant fraud and abuse" within the State's government and had only a tenuous hold on the rule of law. *See* John Walker Mauer, *State Constitutions in a Time of Crisis: The Case of the Texas Constitution of 1876*, 68 TEX. L. REV. 1615, 1615 (1990). Nationally, the corruption of the Gilded Age "set the tone for much of American government." Harold H. Bruff, *Separation of Powers under the Texas*

[2] "The 1836 Constitution of the Republic of Texas worded its expression simply: 'The powers of this government shall be divided into three departments, *viz:* legislative, executive, and judicial, which shall remain forever separate and distinct.' (Art. I, Sec. 1)." *Meshell v. State*, 739 S.W.2d 246, 280 n.2 (Tex. Crim. App. 1987).

Constitution, 68 Tex. L. Rev. 1337, 1338 (1990). And efforts to "centralize the government" via "growth in government expenditures, an increase in taxation, and a rapid accumulation of . . . heavy debt" were of particular concern to many in Texas. *See* A. J. Thomas Jr. & Ann Van Wynen Thomas, *The Texas Constitution of 1876*, 35 TEX. L. REV. 907, 912 (1957). As of the early 1870s, the Legislature had vested "extraordinary power" in the Governor over appointments, local judicial districts, the police, and the school system, centralizing power in the hands of a few. *Id.* at 913.

In 1874, in an unprecedented move, the Governor and the Legislature attempted to promulgate a new constitution—one that further expanded government power—without a constitutional convention. Mauer, *supra*, at 1645–46. Rank and file members of the House revolted, forcing the hand of party leadership, and ultimately succeeded in orchestrating a proper convention where different voices were heard and considered. *Id.* at 1646. Many of the ninety delegates were a "product of farm and frontier life" and harbored distinctly Jeffersonian ideals about "wise and frugal government." Thomas, *supra*, at 907. The resulting Constitution—which remains in effect today—is an "extremely human document" with a distinct commitment to limited government in favor of retaining power in the hands of the people of Texas. S. D. Myres, Jr., *Mysticism, Realism, and the Texas Constitution of 1876*, 9 S.W. Pol. & Soc. Sci. Q. 166, 173 (1928).

Based on closely held principles of representative government, and in reaction to political tumult, the delegates carefully detailed the powers each branch would hold. The ensuing text goes well beyond the federal Constitution in its quest for limited government. To "forestall oppressive, corrupt, and expensive government," the framers of the Texas Constitution, among other things, limited the legislature's taxation power, fragmented executive branch authority among several separately elected officers, and limited judges to short, elective terms. Bruff, *supra*, at 1339; Tex. Const., art. IV, §§ 1, 2, 4. At the same time, the delegates realized that "certain core powers must be reserved" for specific branches to protect and serve the people. Bruff, *supra*, at 1354. That system of clear and limited powers ensured that government was "*restored* to the people of Texas," not concentrated within any one branch of government, and that individual liberty would be "protected by every safeguard known to constitutional law." James C. Harrington, *Free Speech, Press, and Assembly Liberties Under the Texas Bill of Rights*, 68 TEX. L. REV. 1435, 1467 (1990) (quoting Authors of the Texas Constitution of 1875, *Address to the People of Texas* 3)(emphasis added).

Nowhere is that structural guarantee clearer than the Article II Separation of Powers Clause. In that provision, the framers made separation of powers principles an express constitutional command. *See* Tex. Const. art. II, § 1. Combined with clear directives, and limits on each branch, Article II's constitutional directive

asserts Texas' separation of powers doctrine with "special vigor." Bruff, *supra*, at 1348. Indeed, "[a]ll other things being equal, this textual difference" alone "suggests that Texas would more aggressively enforce separation of powers between its governmental branches than would the federal government." *Ex parte Perry*, 483 S.W.3d 884, 894 (Tex. Crim. App. 2016) (internal quotation marks omitted).

This Court has long heeded that call.[3] "A principle which is the very foundation of the government of the United States and of the several states must be deemed one essential to the preservation of the rights and liberties of the people, and should be thoughtfully and faithfully observed by all clothed with the powers of government." *Langever*, 76 S.W.2d at 1035. In *Langever*, the Legislature exercised the judicial power by passing a law that modified deficiency judgments issued by state courts. *Id*. In addressing that legislative overreach, this Court described the doctrine of separation of powers as "an established and fundamental principle of constitutional law," and made clear that the "executive [could] not exercise either judicial or legislative authority. . . ." *Id.* Because each branch is "best suited" to discharge its own powers, the judiciary will not intervene in the affairs of the other branches as long as each branch remains in its constitutionally prescribed lane. *See Armadillo Bail Bonds*, 802 S.W.2d at 239. But if one branch of government

[3] This Court, for example, has frequently set aside vetoes in excess of executive authority. *See, e.g., Fulmore v. Lane*, 140 S.W. 405 (Tex. 1911); *Jessen Assocs., Inc. v. Bullock*, 531 S.W.2d 593, 698 (Tex. 1975); *Houston Tap & B. Ry. Co. v. Randolph*, 24 Tex. 317, 336 (1859).

assumes a power belonging to another branch, or when one branch interferes with the effective exercise of another's powers, the judicial branch must intervene to protect the balance of powers and defend the interests of the people. *See id*.

II. The Governor's Veto Violates the Separation of Powers Clause.

A. Under The Texas Constitution, No Branch of Government Can Assume Another Branch's Powers or Prevent Another Branch From Exercising Its Constitutionally Mandated Duties.

One branch of government violates the principle of separation of powers and weakens the fabric of democracy when it "assumes . . . *to whatever degree*, a power that is more 'properly attached' to another branch" or "when one branch *unduly* interferes with another branch so that the other branch cannot *effectively* exercise its constitutionally designated powers." *Armadillo Bail Bonds*, 802 S.W.2d at 239 (emphases in original) (citation omitted). This means "that the powers properly belonging to one department [of government] shall not be exercised by either of the others." *Id*. at 240. "Each branch has a designated function, and complications arise when one branch intrudes upon or usurps the power of another." *Martinez v. State*, 323 S.W.3d 493, 501 (Tex. Crim. App. 2010). If one branch "exceed[s] its authority, by usurping powers not belonging to it, its act is a nullity, not binding upon the other departments, and may be totally disregarded by them." *Houston Tap & B. Ry.*, 24 Tex. 336.

This means that one branch of government "may not substantially impair the constitutional jurisdiction granted nor practically defeat its exercise" by another branch through such actions as cutting off access to necessary funding. *Langever*, 76 S.W.2d at 1029. In crafting the federal Constitution, the Framers recognized the potential danger of economic power to coerce or control another branch of government. James Madison articulated the necessity of independence, including financial independence, for the separation of powers in the Federalist Papers:

> In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which to a certain extent is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should have a will of its own. . . . It is equally evident, that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices.

The Federalist NO. 51 (James Madison) (Colum. Univ. Press ed., 1962).

The Texas Constitution guarantees these protections; indeed, for over a century, this Court has recognized the importance of funding to each branch of government's independent function and has acted to uphold the separation of powers in this realm. For example, in *Terrell v. Middleton*, this Court enforced comity between the branches of government when it held that the Legislature could not "enlarge[e] or reduc[e] the amount of [the Governor's] compensation." 191 S.W. 1138, 1147 (Tex. 1917). Similarly, in *Vondy v. Commissioners Court of Uvalde County*, this Court articulated a "duty" on the part of the Legislature to "provide the

judiciary with the funds necessary for the judicial branch to function adequately." 620 S.W.2d 104, 110 (Tex. 1981). This Court warned that, absent economic protections, the Legislature "could destroy the judiciary by refusing to adequately fund the courts." *Id*. There is no question that access to funds is essential for legislative action: "It is manifest that certain expenditures must be made by the state, in the way of legislative expenses, or the grant of legislative power could never be effectually exercised." *Terrell v. King*, 14 S.W.2d 786, 792 (Tex. 1929).

B. The Determination of What Laws Should Be Enacted is a Core Function Assigned to the Legislature by the Texas Constitution.

Although a governor in Texas may identify legislative priorities, it falls to the members of the Texas Legislature elected by the people of Texas to make decisions about what legislation is enacted, in what form, and when. *See* Tex. Const. art. III, § 1 ("The Legislative power of this State shall be vested in a Senate and House of Representatives, which together shall be styled 'The Legislature of the State of Texas.'"). To that end, this Court has long recognized "that the state Legislature is clothed with all governmental power which resides in the people." *Conley v. Daughters of the Republic*, 156 S.W. 197, 200 (Tex. 1913). And it is well-established that "[t]he Legislature has paramount and plenary power of legislation in respect to all matters, where such power is not either vested in the general government or denied to the Legislature by constitutional limitations[]." *Fulmore*, 140 S.W. at 419. Indeed, it is the Legislature which "holds the exclusive power to

make law." *Martinez*, 323 S.W.3d at 501; *see also Martinez v. State*, 503 S.W.3d 728, 734 (Tex. App.—El Paso 2016, pet. ref'd) (explaining that the Legislature's power to "make, alter, and repeal laws . . . is considered to be plenary") (internal quotation marks omitted).

The Texas Constitution also grants the Legislature the power to "provide by law for the compensation of all officers, servants, agents and public contractors, not provided for in this Constitution." Tex. Const. art. III, § 44. As the Texas Court of Civil Appeals has held, this power is "reserved exclusively to the legislature." *In re Johnson*, 554 S.W.2d 775, 780 (Tex. Civ. App.—Corpus Christi 1977), *writ ref'd n.r.e.*, 569 S.W.2d 882 (Tex. 1978) (per curium) (holding unconstitutional a statute delegating to the judiciary "exclusive compensation setting function of the legislature"). Thus, there can be no doubt that the power to enact laws and fund government operations properly belongs to the State legislature.

As explained in more detail below, the Governor's veto was unconstitutional in two ways. It assumed for the Executive the Legislature's duty to determine what laws should be enacted, and it unduly interfered with the Legislature's ability to operate during the upcoming two fiscal years.

C. The Governor's Line-Item Veto in this Specific Instance Violates the Separation of Powers by Employing an Executive Function to Control Another Branch's Unequivocally Vested Authority.

The Governor possesses wide, but not unlimited, discretion to veto legislative appropriations. *See Fulmore*, 140 S.W. at 419 ("The tendency of modern times, and it seems to us the better reasoning, support the position that such power of veto should be fairly construed so as to give effect to the constitutional warrant vested in the executive to veto what is deemed by him unwise legislation."). The Governor cannot, however, use the line-item veto power to render ineffectual a co-equal branch of government. Using the Governor's veto power to erase the Legislature's funding as a whole infringes on the Legislature's powers to appropriate funds, provide compensation for officers, and make law—especially when the veto is linked to whether the Governor agrees with how the Legislature has exercised its own constitutional obligations to the people of Texas. *See generally* Miriam Seifter, *Judging Power Plays in the American States*, 97 Tex. L. Rev. 1217, 1220 (2019) (addressing "recent power plays" by actors in state governments that "present important, justiciable questions of state constitutional law").

First, the Governor's veto undermines the basic principle of the appropriations power by leaving the Legislature with no budget to operate. Such an overbroad use of the executive line-edit authority stymies the "vital . . . congressional control over appropriations" that serves as "failsafe against catastrophe." Zachary S. Price,

Funding Restrictions and Separations of Powers, 71 Vand. L. Rev. 357, 439, 464 (2018). The Governor's veto does not reflect a collaboration between the Executive and the Legislature to carefully allocate public funds; it reflects a desire to use an otherwise legal power to unlawfully coerce the enactment of specific laws and to completely defund the Legislature itself.

Second, the Governor's veto trammels on the Legislature's constitutionally mandated function to provide compensation for officers. *See* Tex. Const. art. III, § 44. Just as the Legislature cannot delegate its exclusive compensation-setting function to another branch, this power cannot be usurped. *See Ex parte Giles*, 502 S.W.2d 774, 783 (Tex. Crim. App. 1973) ("When [a] power . . . has been conferred by the Constitution [to one branch], it cannot be exercised by [another]."); *see also* Mikael A. Garcia, *Is the Texas Disaster Act of 1975 Unconstitutional? A COVID-Era Review of Constitutionally Mandated Separation of Powers as They Relate to Chapter 418 of the Texas Government Code*, 25 Tex. Rev. L. Politics 7, 40 (2021) ("No provision in the Texas constitution expressly permits the legislature to delegate its authority to create or suspend law to the executive branch, so it would seem straightforward that the executive branch does not . . . have any constitutional authority [in this realm]."). By entirely eliminating the Legislature's funding, the Governor's veto effectively sets the compensation for all legislative staff at zero. The veto thus impermissibly usurps the Legislature's exclusive compensation-

setting power. Or, viewed through another lens, the veto effectively prevents the Legislature from fulfilling this constitutionally mandated duty by preventing the Legislature from providing "the compensation of all officers, servants, agents and public contractors" within the Legislature. Tex. Const. art. III, § 44.

Third, the veto here unduly interferes with the Legislature's constitutionally assigned power to make law. Eliminating the Legislature's operating budget disrupts the body's ability to make law by inhibiting its ability to function altogether. *See Terrell*, 14 S.W.2d at 792. In addition to funding the State House and Senate, Article X funds crucial nonpartisan agencies, including the Legislative Reference Library, which conducts research for the Legislature[4], the Legislative Budget Board, which provides fiscal analyses for legislation[5], the Legislative Council, which drafts and analyzes potential legislation[6], and the State Auditor's Office, which reviews and investigates entities receiving state funds.[7] *See* Act of May 27, 2021, 87th Leg., R.S., S.B. 1, Art. X at X-12.

Zeroing out the Legislature's funding for the next biennium means that lawmakers, staffers, and legislative agencies will go without pay and will be unable to meet their financial obligations—which would lead to a halt of legislative operations. *See, e.g.*, *State ex rel. Brotherton v. Blankenship*, 207 S.E.2d 421, 433

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4 *Mission*, Leg. Ref. Lib. of Tex., https://lrl.texas.gov/library/index.cfm.
5 *About Legislative Budget Board*, Leg. Budget Bd., https://www.lbb.state.tx.us/About_LBB.aspx.
6 *About the Council*, Tex. Leg. Council, https://tlc.texas.gov/about.
7 *The State Auditor's Office*, Tex. State Auditor's Office, https://sao.texas.gov/About/.

(W. Va. 1973) (invalidating line-item vetoes that effectively abolished the offices of state treasurer and secretary of state by reducing their appropriations to zero). In *Blankenship*, the Supreme Court of Appeals of West Virginia held "[i]t would defy reality and reason to say that either of those officers could conduct the business of such offices, as intended by the people, without any funds with which to operate and personnel to assist them. The Governor's act in reducing such accounts to zero has effectively abolished the function of such offices." *Id.* Likewise, eliminating the Legislature's funding for two years would deprive lawmakers of the assistance necessary to consider and enact legislation. The Legislature's ability to fulfill its constitutional duty to make laws must not hinge on its willingness to pass the Governor's preferred bills; permitting such action to go unchecked would set dangerous precedent for any future governmental body, regardless of political party. The Governor's veto renders the Legislature unable to fulfill its constitutional duty to make law and cannot be given legal effect.

Amici are aware of only one other situation in which a state's governor sought to use his line-item veto power to eliminate the budget of the state legislature. The Minnesota Supreme Court found that veto constitutional based on facts that do not exist here. *Ninetieth Minn. State Senate v. Dayton*, 903 N.W.2d 609, 625 (Minn. 2017). In that case, the state's legislature retained access to millions of dollars of previously appropriated, unencumbered funds that carried over to allow the

legislature to continue to effectively function despite the veto. In other words, unlike here, the Minnesota governor's veto did not risk shutting down legislative operations. *Id.* at 616. Here, the Texas Governor's action also eliminated the Legislature's access to carryover funds. *See* Tex. Gov. Proclamation at 1, *SB 1 Signature and Item Disapproval Proclamation* (June 18, 2021). Thus, Governor Abbott's veto not only withholds all funds appropriated to the Legislature, it also prohibited the redirection of monies already appropriated, thereby depriving the Legislature from relying on any holdover funds to stay in operation into the new biennium. Unlike the situation in Minnesota, here, the veto truly would preclude the legislative branch from operating.[8]

III. A Writ of Mandamus Is Proper to Restore the Balance of Powers.

Policing the efforts of one branch to aggrandize its powers at the expense of other branches is one of the judiciary's critical functions. It is well-established that when executive action exceeds the authority granted by the Texas Constitution, it has no effect. *See, e.g., Jessen Assoc.,* , 531 S.W.2d at 598 (holding writ of mandamus as proper remedy to compel comptroller's payment of construction project because the veto was not authorized to disapprove a rider that was not an item of appropriation); *Fulmore*, 140 S.W. at 412 (holding writ of mandamus was

[8] As a further distinction between the two cases, the Minnesota Supreme Court expressly "decline[d] to decide whether those vetoes nevertheless violated [the Minnesota constitution's separations-of-powers clause] as unconstitutionally coercive." *Id.* at 612. In the case before this Court, however, the issue of coercion cannot be avoided.

proper remedy to compel payment of clerk in attorney general's office when the veto exceeded constitutional authority by attempting to disapprove a paragraph of appropriation bill).

The use of a writ of mandamus as a tool to prevent government overreach is true for all branches of government at every level, and has been since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 168–69 (1803) (citing *King v. Baker*, 3d Burrows 1266) (recognizing that when there is a right to perform a service and a person is "dispossessed of such right, and has no other specific legal remedy," courts "ought to assist by mandamus, upon reasons of justice . . . and upon reasons of public policy, to preserve peace, order and good government"); *see also* Saikrishna B. Prakash & Michael D. Ramsey, *The Goldilocks Executive*, 90 TEX. L. REV. 973, 991 (2012); Bruff, *supra,* at 1364. The public's wishes for the executive to be bound by law is reflected by democratic principles, *see* Prakash & Ramsey, *supra*, at 974, and it logically follows that the public favors all branches to be bound by law.

When a branch of government, or part of a branch, exceeds the authority it was granted by the Constitution, those consequently deprived of their rights have the power to safeguard their interests, Tex. Const. art. II, § 1; *Patel v. Tex. Dep't of Licensing & Reg.*, 469 S.W.3d 69, 119 (Tex. 2015), by petitioning the Court for a writ of mandamus. *Marbury*, 5. U.S. (1 Cranch) at 168-169. Indeed, the Legislature is unable to safeguard its prerogatives without the Judiciary's ability to compel the

Executive branch when it exceeds the authority granted to it. *See* Bruff, *supra*, at 1364. The Executive branch would have the same expectation of redress were the Legislature ever to overstep its constitutionally delineated authority, for example, by similarly defunding the Executive Branch.

The Governor's attempted use of his discretionary veto power to prevent the Legislature from making laws is an abuse of discretion for numerous reasons. Namely, the Governor does not have the power to eliminate or obstruct coequal branches of government, the Texas Constitution guarantees the Legislature's funding, and the gubernatorial veto improperly usurps the Legislature's powers. The writ of mandamus is the appropriate remedy to rectify the Governor's unconstitutional veto of Article X.

* * *

Although the origin of the present dispute may lie in partisan politics, the issue before the Court is not a political one. The Court is faced with a threat to the fundamental, long-standing principles of government that all Texans hold dear, Republican and Democrat alike. Of the cherished values and ideals guaranteed within the Texas Constitution, few are as important to the functioning of government and the commitment to democracy as the separation of powers principle embodied in Article II, Section 1.

Defunding a branch of government has the effect of rendering that branch useless, or at minimum, severely impairing its ability to exercise its constitutionally guaranteed powers that all Texans depend upon. That basic conclusion cannot be disputed. Allowing one branch to wield such power over another would create a dangerous precedent that could allow one branch to unduly coerce, control, or effectually eliminate another branch entirely by removing its funding or other means by which it needs to survive. This cannot be. There are a multitude of valid means by which a branch can attempt to influence or persuade another within the confines of the law, but intentionally depriving a branch of its lifeblood is not—and cannot be—one of them. Not now, and not in the future. The Court must act to preserve this basic tenet of our democracy, just as it has done in the face of similar threats in the past. *See, e.g.*, *Vondy*, 620 S.W.2d at 110 (recognizing that "a legislative body could destroy the judiciary by refusing to adequately fund the courts.").

CONCLUSION

To preserve Texas' commitment to separate, coequal branches of government, and to ensure that the Legislature is able to continue to function, *amici* urge this Court to find the Governor's attempted veto unconstitutional.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel certifies that this petition complies with the typeface requirements of TEX. R. APP. P. 9.4(e), because it has been printed in a conventional typeface no smaller than 14-point except for footnotes, which are no smaller than 12-point. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), because it contains less than 4,500 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1).

/s/ Blayne Thompson
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CERTIFICATE OF SERVICE

On July 5, 2021, I electronically filed this Amicus Brief in Support of Petition for Writ of Mandamus with the Clerk of Court using the eFile.TXCourts.gov electronic filing system, which will send notification of the filing to all parties of record.

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