



GOVERNOR GREG ABBOTT

JAMES P. SULLIVAN  
General Counsel

(512) 936-3306  
james.sullivan@gov.texas.gov

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**Via E-Filing**

Mr. Blake Hawthorne, Clerk  
Supreme Court of Texas

Re: No. 24-0884, *In re Texas House of Representatives*

Dear Mr. Hawthorne:

In his capacity as the Chief Executive Officer of the State, Governor Greg Abbott submits this letter brief as amicus curiae supporting TDCJ in the above-captioned case.\*

The Texas Constitution's Separation-of-Powers Clause provides that no branch "shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted." TEX. CONST. art. II, § 1. The power to grant clemency in a capital case, including a 30-day reprieve, is vested in the Governor alone. TEX. CONST. art. IV, § 11(b).

In this case, however, actions by a single committee of a single chamber of the Legislature have had the effect, both legally and factually, of granting (at least) a 90-day reprieve. Indeed, the House Committee on Criminal Jurisprudence conceded as much in its response brief filed earlier today. *See* Response at 3 (noting that the relief it sought and obtained "slowed [TDCJ] in performing an execution"); *see also* @SupremeCourtTX, X (Oct. 17, 2024), [https://x.com/SupremeCourt\\_TX/status/1847107820899971266](https://x.com/SupremeCourt_TX/status/1847107820899971266) (announcing this Court's order "effectively halting the execution of Robert Roberson"). Unless the Court rejects that tactic, it can be repeated in every capital case, effectively rewriting the Constitution to reassign a power given only to the Governor.

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\* No fee was paid or will be paid for preparing this brief. *See* TEX. R. APP. P. 11(c).

Here, the House Committee on Criminal Jurisprudence has stepped out of line. The Legislative Branch is supposed to move first, as Justice Young correctly acknowledged, by “defin[ing] crimes and authoriz[ing] punishments.” *In re Texas House of Representatives*, No. 24-0884, slip op. at 1 (Tex. Oct. 17, 2024) (Young, J., joined by Hecht, C.J., & Huddle, J., concurring). Next, the Judicial Branch can order the execution of a death sentence under those criminal laws—bringing its role to an end. *See, e.g., Vandyke v. State*, 538 S.W.3d 561, 572 (Tex. Crim. App. 2017) (“Consistent with the constitutional provision that prohibits any one branch of the government from exercising control over any other branch, we have long recognized that this Court has no power to control nor right to review the Governor’s exercise of his clemency power.”).

At that point, the Governor has the ultimate authority to grant a 30-day reprieve, or some other form of clemency. *See, e.g., Ex parte Gore*, 4 S.W.2d 38, 39 (Tex. Crim. App. 1928) (“[T]he power to parole, to pardon, etc., is one confided by our Constitution to the Governor of this state, over whose discretion in such matters this court has no control or right of review.”). Nowhere does the Constitution even impliedly suggest—much less “expressly permit” as the Separation-of-Powers Clause requires—that the Legislative Branch can cut in again at the end.

If the House Committee on Criminal Jurisprudence thinks itself entitled to testimony from a criminal on death row, a point which is not conceded, it could have done so without erasing the authority given exclusively to the Governor. Robert Roberson was convicted over two decades ago. His claim under Article 11.073 of the Texas Code of Criminal Procedure—the supposed point of hearing his legislative testimony—was rejected by the Court of Criminal Appeals over a year ago. And his execution date was set months ago. In all that time, even when it was clear that Roberson’s execution date was nearing and the Article 11.073 issue was manifest, the House Committee could not trouble itself with seeking Roberson’s testimony. Only at the eleventh hour, when the Constitution empowers the Governor to make the last move, did the House Committee decide to violate the Separation-of-Powers Clause.

“*The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days . . .*” TEX. CONST. art. IV, § 11(b) (emphasis added). Nobody other than the Governor, in

any branch of this State's government, can exercise that constitutional clemency power. Not the House Committee on Criminal Jurisprudence. Not the 53rd Judicial District Court of Travis County. Not the Court of Criminal Appeals. Not even the *Supreme* Court of Texas.

The Court should dismiss the House Committee's petition for lack of jurisdiction. There is no reason to delay. At a minimum, though, the Court should immediately vacate the temporary injunction, which rests on a subpoena that, on its face, was not signed by the officer required by law. *See* TEX. GOV'T CODE § 301.024(a); H.R. 1, § 13, 88th Leg., at 13 (2023).

Respectfully submitted.

/s/ James P. Sullivan

JAMES P. SULLIVAN

General Counsel

Texas Bar No. 24070702

james.sullivan@gov.texas.gov

TREVOR W. EZELL

Deputy General Counsel

JASON T. BRAMOW

Assistant General Counsel

Office of the Governor

P.O. Box 12428

Austin, Texas 78711

(512) 936-3306

*Counsel for Amicus Curiae*

## CERTIFICATE OF COMPLIANCE

Microsoft Word reports that this document contains 737 words, excluding the exempted portions of the document.

/s/ James P. Sullivan  
James P. Sullivan  
*Counsel for Amicus Curiae*

## CERTIFICATE OF SERVICE

On October 20, 2024, this document was served electronically on all counsel of record as follows:

Jeff Leach (jleach@grayreed.com)  
Joe Moody (joe.moody@house.texas.gov)  
*Counsel for Petitioners*

Billy Cole (william.cole@oag.texas.gov)  
*Counsel for Respondents*

/s/ James P. Sullivan  
James P. Sullivan  
*Counsel for Amicus Curiae*

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William Cole		william.cole@oag.texas.gov	10/21/2024 8:43:25 AM	SENT

Associated Case Party: Texas Department of Criminal Justice

Name	BarNumber	Email	TimestampSubmitted	Status
Stephanie Greger		stephanie.greger@tdcj.texas.gov	10/21/2024 8:43:25 AM	SENT

Associated Case Party: Office of Governor Greg Abbott

Name	BarNumber	Email	TimestampSubmitted	Status
James Sullivan		james.sullivan@gov.texas.gov	10/21/2024 8:43:25 AM	SENT