

Velva L. Price
District Clerk
Travis County
D-1-GN-21-003760
Alexus Rodriguez

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

REP. GINA HINOJOSA, §
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., §

Plaintiffs,

v.

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.

Defendants.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

261ST JUDICIAL DISTRICT

**PLAINTIFFS' ORIGINAL VERIFIED PETITION AND
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF**

A fundamental principle of our constitutional system of government is that the State's power to arrest and incarcerate cannot be used for political purposes. This is an emergency lawsuit brought by elected members of the Texas House of Representatives facing imminent and irreparable injury due to an interpretation and application of the Texas Constitution and the Rules

of the House of Representatives of the State of Texas that would confound this principle by giving the government the power to arrest its political opponents. Affidavits of Representative Gina Hinojosa, Representative Trey Martinez Fischer, and Representative Jasmine Crockett are attached in support.

DISCOVERY LEVEL

1. Plaintiffs intend to conduct discovery under Level 2.

PARTIES

2. Plaintiff Gina Hinojosa is a Democratic member of the Texas House of Representatives representing District 49. Representative Hinojosa resides in Travis County, Texas.
3. Plaintiff Alma A. Allen is a Democratic member of the Texas House of Representatives representing District 131. Representative Allen resides in Harris County, Texas.
4. Plaintiff Michelle Beckley is a Democratic member of the Texas House of Representatives representing District 65. Representative Beckley resides in Denton County, Texas.
5. Plaintiff Jasmine Crockett is a Democratic member of the Texas House of Representatives representing District 100. Representative Crockett resides in Dallas County, Texas.
6. Plaintiff Joe Deshotel is a Democratic member of the Texas House of Representatives representing District 22. Representative Deshotel resides in Jefferson County, Texas.
7. Plaintiff Barbara Gervin-Hawkins is a Democratic member of the Texas House of Representatives representing District 120. Representative Gervin-Hawkins resides in Bexar County, Texas.
8. Plaintiff Vikki Goodwin is a Democratic member of the Texas House of Representatives representing District 47. Representative Goodwin resides in Travis County, Texas.

9. Plaintiff Celia Israel is a Democratic member of the Texas House of Representatives representing District 50. Representative Israel resides in Travis County, Texas.
10. Plaintiff Ray Lopez is a Democratic member of the Texas House of Representatives representing District 125. Representative Lopez resides in Bexar County, Texas.
11. Plaintiff Armando "Mando" Martinez is a Democratic member of the Texas House of Representatives representing District 39. Representative Martinez resides in Hidalgo County, Texas.
12. Plaintiff Trey Martinez Fischer is a Democratic member of the Texas House of Representatives representing District 116. Representative Martinez Fischer resides in Bexar County, Texas.
13. Plaintiff Ina Minjarez is a Democratic member of the Texas House of Representatives representing District 124. Representative Minjarez resides in Bexar County, Texas.
14. Plaintiff Christina Morales is a Democratic member of the Texas House of Representatives representing District 145. Representative Morales resides in Harris County, Texas.
15. Plaintiff Mary Ann Perez is a Democratic member of the Texas House of Representatives representing District 144. Representative Perez resides in Harris County, Texas.
16. Plaintiff Ana-Maria Ramos is a Democratic member of the Texas House of Representatives representing District 102. Representative Ramos resides in Dallas County, Texas.
17. Plaintiff Richard Peña Raymond is a Democratic member of the Texas House of Representatives representing District 42. Representative Raymond resides in Webb County, Texas.
18. Plaintiff Ron Reynolds is a Democratic member of the Texas House of Representatives representing District 27. Representative Reynolds resides in Fort Bend County, Texas.

19. Plaintiff Eddie Rodriguez is a Democratic member of the Texas House of Representatives representing District 51. Representative Rodriguez resides in Travis County, Texas.

20. Plaintiff Ramon Romero, Jr. is a Democratic member of the Texas House of Representatives representing District 90. Representative Romero resides in Tarrant County, Texas.

21. Defendant Governor Greg Abbott is the elected Governor of the State of Texas and the chief executive officer of the State. Governor Abbott is sued in his official capacity.

22. Defendant Matthew McDade "Dade" Phelan is a Republican member of the Texas House of Representatives representing District 21 and the 76th Speaker of the Texas House of Representatives. Speaker Phelan is sued in his official capacity.

23. The defendant State of Texas is a state of the United States of America.

JURISDICTION AND VENUE

24. This Court has jurisdiction over the controversy pursuant to the Texas Uniform Declaratory Judgments Act. TEX. CIV. PRAC. & REM. CODE § 37.001, *et. seq.*

25. Jurisdiction to award the declaratory relief requested herein is conferred upon this Court by Texas Civil Practice and Remedies Code Section 37.004. Jurisdiction for the attorneys' fees requested by the plaintiffs herein is conferred upon this Court by Texas Civil Practice and Remedies Code Section 37.009.

26. Venue is proper in Travis County pursuant to Texas Civil Practices and Remedies Code Sections 15.002(a), 15.014, and 15.0151 because the events or omissions giving rise to the cause of action arose in Travis County and because the state government departments and divisions at issue are located in Travis County.

FACTS

27. In 2020, at least 66 percent of the 17 million registered voters in Texas cast ballots in the general election, which was the largest turnout in nearly 30 years. Thanks to the efforts of primarily Democratic officials and against headwinds and criticisms voiced by State Republican officials, early voting numbers shattered records. Some of the highest voter turnout increases occurred in predominantly Hispanic counties. Voting measures aimed at increasing registration and inclusion like mail-in ballots and drive-thru voting were used by Democratic voters more than Republican voters. The number of absentee ballots before Election Day doubled from four years earlier to 1 million, and 1 in 10 in-person early voters in predominantly Democratic Harris County alone cast their ballots at drive-thru locations. In short, despite a global pandemic and an atmosphere of civil unrest, the political franchise in Texas grew and grew stronger.

28. Shortly after the 2020 election, the Republican caucus in the Texas House of Representatives (the "House") introduced legislation dubiously named the Election Integrity Protection Act of 2021 ("H.B. 3") to reverse this trend. Every two years, the Texas Legislature convenes for a 140-day regular legislative session. The 87th Texas Legislature convened on January 12, 2021, and was scheduled to conclude on May 31, 2021. Although H.B. 3 expressly recognized that "full, free, and fair elections are the underpinnings of a stable constitutional democracy," the bill contained provisions designed to curb increased voting engagement in urban locations and populations of color, including:

- i. a ban on drive-thru voting that accommodated busy and disabled voters;
- ii. restrictions on early voting hours that accommodated voters like medical professionals and laborers with inflexible work hours;
- iii. a ban on 24-hour voting that accommodated voters with inflexible work hours;

- iv. a ban on, and a brand-new state jail felony for, distributing applications to request mail-in ballots that accommodated new, uninformed, or reluctant voting populations unable to make it to a voting location during voting hours;
- v. an increased area where partisan poll watchers could be present at voting stations; and
- vi. additional ID requirements on mail-in ballots, including the provision of sensitive driver's license numbers and Social Security number excerpts, designed to discourage mail-in voting or increase the ability to challenge such votes for purely technical reasons.

The initial version of H.B. 3 also contained other provisions which were not only unlawful but widely unpopular, including a proposal to restrict the start time for Sunday early voting hours, which was designed to reduce the ability for churchgoers, including large populations of African American voters, to assemble and encourage each other to vote.

29. Article III, Section 10 of the Texas Constitution provides that, in order for the House to vote on H.B. 3 or otherwise "do business," a quorum of two-thirds of the elected House members must be in attendance. The House Rules also provide that "no business shall be transacted" without a quorum "except to compel the attendance of absent members or to adjourn." The House has 150 seats, so as many as 100 members must be present in the chamber to advance the Republican caucus's signature legislation.

30. Late on May 30, 2021, after all other efforts to persuade Defendants and House Republicans to reform H.B. 3 to preserve their constituents' voting rights had failed, House Democrats who opposed H.B. 3 left the Capitol building in accordance with their personal convictions and in fulfillment of their political responsibilities. The House therefore lacked a

quorum to take a vote on H.B. 3 and other measures the legislative leadership had waited until the last minute of the legislative session to advance.

31. On July 7, 2021, Governor Abbott issued a proclamation calling for a special session to begin on July 8, 2021. On July 12, over 50 Texas House Democrats, including Plaintiffs, traveled to Washington, D.C. to petition their Congressional representatives to pass federal voting rights legislation. The House Democrats' absence prevented a quorum at the Special Session.

32. Speaker Phelan responded to Plaintiffs' absence by declaring that the House majority will "use every available resource" to obtain a quorum. Governor Abbott publicly encouraged Speaker Phelan to "issue a call to have these members arrested." On July 13, 2021, House Republicans passed a Motion for Call of the House, which is a procedural maneuver set forth in Texas House Rule 5, Section 8 providing that "[a]ll 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 "July 13 Measure").

33. Defendants' public comments and actions show that they are interpreting the Texas Constitution and the word "arrest" in the House Rules to permit the Speaker to direct the House Sergeant-at-Arms to dispatch state police to physically confine or detain the missing members to secure a quorum. An arrest, however, has a very specific meaning and set of procedural requirements under Texas law because it is such a significant intrusion upon the privacy and integrity of the arrested person. To determine whether an "arrest" has occurred, courts consider factors such as (1) the amount of force displayed, (2) the duration of the detention; and (3) the officer's express intent. Defendants' threatened actions against Plaintiffs would constitute an "arrest" under the Fourth Amendment because Defendants have threatened to physically restrain

Plaintiffs and move Plaintiffs from one place to another to be kept for an indefinite period of time, against the Plaintiffs' will.

34. Defendants' interpretation of the law and use of the word "arrest" is incorrect and contrary to law. There is no dispute that Texas law enforcement officials purportedly empowered by the House Rules and July 13 Measure do not have jurisdiction to "arrest" lawmakers outside the state, including in the District of Columbia. But the law does not provide for physical confinement of lawmakers *within* the State of Texas either if those lawmakers have committed no crime for at least four reasons.

35. First, the Texas Code of Criminal Procedure provides that a licensed peace officer may arrest a person only for a crime, *see* TEX. CRIM. P. CODE art. 2.12, and the Texas Government Code authorizes DPS officers to "the prevention and detection of crime." TEX. GOV'T CODE § 411.002. There is no allegation that Plaintiffs, or any Democratic member of the Legislature who left Texas to exercise their rights to speech, assembly, and petition to federal lawmakers, are or have committed a crime or were or are a danger to public safety. Therefore, regardless of what the House Rules say in a housekeeping provision about quorum math, Texas law enforcement officials have no power to "arrest" Plaintiffs in a criminal sense.

36. Second, the Speaker's authority outside of House Rule 4 Section 8 and the July 13 Measure does not extend to arrests without due process either. The Speaker of the House can conceivably dispatch sheriffs with authority to "execute subpoenas and other process" to request Plaintiffs' attendance at the Capitol, but those officials cannot arrest Plaintiffs because the term "subpoenas and other process" does not include the deprivation of a person's liberty under Texas law. *See* TEX. LOCAL GOV'T CODE § 85.022; *Broom v. MacMaster*, 992 S.W.2d 659, 664 (Tex. App.—Dallas 1999, no pet.). An arrest results in the immediate deprivation of a person's liberty, but

subpoena power is predicated on the ability of a respondent to quash or object to process before compliance is required. *See* TEX. R. CIV. P. 122, 176.7; *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985).

37. Third, Defendants' interpretation and application of the House Rules to authorize Plaintiffs' arrest during the 87th Legislature is directly contrary to Article III, Section 14 of the Texas Constitution. That provision states: "Senators and Representatives shall, except in cases of treason, felony, or breach of the peace, be privileged from arrest during the session of the Legislature, and in going to and returning from the same." As Governor Abbott has made amply clear, he intends to prolong "the session of the Legislature" indefinitely until there is a quorum to consider H.B. 3 and other Republican caucus priorities. Defendants' interpretation of the House Rules cannot be squared with the plain language of Article III, Section 14, and if Defendants' position is that the House Rules intentionally authorize an "arrest," then those Rules are unconstitutional.

38. Fourth, even if Texas law authorized the arrest of legislators who have not committed a crime—which it does not—such law would be unconstitutional. The Fourth and Fourteenth Amendments to the U.S. Constitution prohibit State actors such as Defendants from effecting an arrest without probable cause being shown that such person has committed a crime. The First Amendment of the U.S. Constitution also prohibits State actors such as Defendants from infringing on Plaintiffs' right to speak, assemble, petition, and provide effective representation to constituents opposed to H.B. 3 outside of the House chamber. These foundational protections prevail over any contrary provision in the Texas Constitution or legislative rules. U.S. CONST. art. VI §2.

39. Despite this law to the contrary, Defendants and their agents and affiliates unabashedly proclaimed their intent to use physical force to detain, confine, and otherwise restrict the liberty of

House Democrats, including Plaintiffs, "[a]s soon as they come back in the state of Texas." On July 12, Governor Abbott told the media, "As soon as they come back in the state of Texas, [Plaintiffs] will be arrested, they will be cabined inside the Texas Capitol until they get their job done." On July 13, House Administration Committee Chair Rep. Will Metcalf sent a letter to Capitol Region DPS Director David Cabrera requesting the assistance of troopers to aid operation of the chamber under direction of the Sergeant-at-Arms. On July 14, Senator Ted Cruz commented that Defendants could "handcuff and put in leg irons" Plaintiffs and other legislators who were absent from the Special Session. And on July 25, Speaker Phelan issued a "warrant" for the arrest of House Democrat Philip Cortez, which directed the House Sergeant-at-Arms to take Representative Cortez into "custody" and to "bring" him "before the bar of the House."

40. Defendants' erroneous interpretation of state rules and unlawful threats have harmed Plaintiffs. Fearing seizure of their liberty without due process, Plaintiffs have remained outside Texas from July 12 to present. Because they face detention and confinement from Defendants "[a]s soon as they come back in the state of Texas," Plaintiffs have been deprived of their homes, families, friends, staff, and constituents for nearly one month.

41. Unfortunately, the barrier between Plaintiffs and their homes is indefinite. The next scheduled House quorum call is Monday, August 9, and yesterday, Governor Abbott vowed to "continue to call special session after special session" to press for voting rights legislation and other measures. Governor Abbott has even pledged to call "special session after special session after special session . . . all the way up until election day of next year if I have to." As long as Defendants keep the 87th Legislature in session, the menace of political apprehension, possibly in "handcuffs" and "leg irons," looms over Plaintiffs.

COUNT I: DECLARATORY JUDGMENT ACTION

42. Plaintiffs repeat and reallege each and every allegation of the Petition as if set forth fully in this cause of action.

43. Pursuant to Texas Civil Practice and Remedies Code Sections 37.001, *et seq.*, the Court may declare rights, status, or other legal relations whether or not further relief is or could be claimed.

44. Plaintiffs seek a judgment declaring that Article III, Section 10 of the Texas Constitution, House Rule 5, Section 8, and a Call to the House passed on or after July 13, 2021 do not authorize Defendants or their agents, including the Sergeant-at-Arms and officers appointed by him, to physically arrest legislators who have not committed a crime.

45. A justiciable controversy exists as to the rights and status of Plaintiffs, which will be resolved by the declaration sought above. Specifically, if the Court does not issue the declaration sought, then Defendants will make good on threats to physically detain Plaintiffs, confine Plaintiffs, or otherwise deprive Plaintiffs of their liberty purely for Defendants' political and parliamentary motives. If, however, the Court issues the declaration sought consistent with applicable law, then Defendants will retain their liberty to represent their constituents as they see fit.

APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF

46. Plaintiffs ask that the Court grant a temporary restraining order, a temporary injunction after a hearing, and a permanent injunction after a trial on the merits which enjoins Defendants from effecting a false arrest—*i.e.*, an arrest made without justification or authority of law—on Plaintiffs and similarly situated Texas House Democrats. Plaintiffs specifically seek an order enjoining Defendants 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 July 13, 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 July 13, 2021; and
- c. Commanding the 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 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 July 13, 2021.

47. Plaintiffs' application for a temporary restraining order and temporary and permanent injunctive relief is authorized under Section 65.011(1), (2), (3), and (5) of the Texas Civil Practice and Remedies Code.

48. Based on the verified facts in this Petition, it is probable that Plaintiffs will prevail against Defendants after a trial on the merits. As the only Texas state district court found when faced with

a similar legal question in 2003, the law does not provide for physical confinement of lawmakers within the State of Texas if those lawmakers have committed no crime. *See Burnham v. Davis*, Case No GN-301665, 2003 WL 25301368 (Tex. Dist. Ct. Aug. 4, 2003), *reversed on inapplicable procedural grounds*, 137 S.W.3d 325 (Tex. App.—Austin 2004).

49. At least four reasons support Judge Campbell's declaration in the *Burnham* case. First, the Texas Code of Criminal Procedure provides that a licensed peace officer may arrest a person only for a crime, *see* TEX. CRIM. P. CODE art. 2.12, and the Texas Government Code authorizes DPS officers to "the prevention and detection of crime." TEX. GOV'T CODE § 411.002. Because there is no allegation that Plaintiffs, or any Democratic member of the Legislature who left Texas to exercise their rights to speech, assembly, and petition to federal lawmakers, are or have committed a crime or were or are a danger to public safety, Texas law enforcement officials have no power to "arrest" Plaintiffs in a criminal sense. Second, the Speaker of the House cannot dispatch sheriffs who are authorized to "execute subpoenas and other process" to arrest Plaintiffs, as the term "subpoenas and other process" does not include the deprivation of a person's liberty under Texas law. *See* TEX. LOCAL GOV'T CODE § 85.022; *Broom v. MacMaster*, 992 S.W.2d 659, 664 (Tex. App.—Dallas 1999, no pet.). An arrest results in the immediate deprivation of a person's liberty, but the power to subpoena is predicated on the ability of a respondent to quash or object to process before compliance is required. *See* TEX. R. CIV. P. 122, 176.7; *Kawasaki Steel Corp. v. Middleton*, 699 S.W.2d 199, 203 (Tex. 1985). Third, Defendants' interpretation and application of the House Rules to authorize Plaintiffs' arrest during the 87th Legislature is directly contrary to the privilege from arrest during legislative session provided to Plaintiffs under Article III, Section 14 of the Texas Constitution. And fourth, even if Texas law authorized the arrest of legislators who have not committed a crime—which it does not—such law would be unconstitutional. Effecting an

arrest on Plaintiffs would violate the First, Fourth, and Fourteenth Amendments to the U.S. Constitution, which prevail over any contrary provision in the Texas Constitution or legislative rules. U.S. CONST. art. VI §2.

50. If Plaintiffs' application is not granted, Plaintiffs will suffer imminent and irreparable harm in the form of an impossible choice between loss of liberty (if they return to Texas) and loss of real and personal property, familiar and friendly love, and homestead comfort (if they remain outside of Texas). These harms are incapable of precise calculation, rendering monetary remedies inadequate. These harms are also imminent and indefinite in nature, as Defendants will reconvene Legislative Session in less than 24 hours and have threatened to extend that session until November 8, 2022.

51. Although (a) the temporary restraining order or temporary injunction is against the State and officers of the State in their governmental capacity, (b) Defendants have no pecuniary interest in the suit and no money damages can be shown, Plaintiffs are willing to post a bond, if necessary, in a sum fixed by the Court.

ATTORNEY FEES AND COSTS

52. Plaintiffs have incurred, and are entitled to recover, costs and reasonable and necessary attorney fees that are equitable and just under Texas Civil Practice and Remedies Code Section 37.009.

PRAYER

Plaintiffs individually and collectively pray that citation be issued for Defendants to appear and answer and that the Court award Plaintiff relief from Defendants, including but not limited to:

- (1) Declaratory relief, including but not limited to a judgment declaring that neither Texas Constitution art. III Section 10 nor the House Rules permit Defendants or

their agents to detain, confine, or otherwise restrict 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 if they have not committed a crime;

- (2) Equitable relief, including but not limited to temporary and permanent injunctive relief as described above;
- (3) Reasonable attorney's fees under Tex. Civ. Prac. & Rem. Code §37; and
- (4) Prejudgment interest, post-judgment interest, and costs.

Plaintiffs further pray that the Court grant such other and further relief to which Plaintiffs may be justly entitled.

Respectfully submitted,

MINTON, BASSETT, FLORES & CARSEY, P.C.

/s/ Samuel E. Bassett

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