Supreme Court of Texas

No. 23-0682

In re Steven Hotze, M.D., Allesan Paige Streeter, and Honorable Molly White,

Relators

On Petition for Writ of Mandamus

JUSTICE DEVINE, dissenting to the denial of the petition for writ of mandamus.

In our republican form of government, the relationship between citizens and their political representatives is sacred and constitutionally protected.[1] "[T]he people are the sovereign,"[2] but they express their will and govern through their duly elected representatives.[3] For that to

[1] *See* TEX. CONST. preamble ("Humbly invoking the blessings of Almighty God, the people of the State of Texas, do ordain and establish this Constitution."); *id.* art. I, § 2 ("All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a republican form of government[.]").

[2] *See Hall v. McRaven*, 508 S.W.3d 232, 253 (Tex. 2017) (Brown, J., concurring).

[3] *See Wichita Falls State Hosp. v. Taylor*, 106 S.W.3d 692, 695 (Tex. 2003) ("In Texas, the people's will is expressed in the Constitution and laws of

happen, our elected representatives must be free to communicate and share information with their constituents. The freedom of political dialogue and association is of such "transcendent importance" to "the maintenance of democratic institutions"[4] that the Texas Constitution expressly guarantees the right to speak, to assemble, and to petition our government.[5] These bedrock principles of freedom are the foundation of an enduring democracy.

But at a historic moment for our great state, these rights are imperiled by rules adopted in connection with the impending impeachment trial of Warren Kenneth Paxton, Jr., the third-term Attorney General of the State of Texas.[6] In an unprecedented move, the Senate, sitting as the "Court of Impeachment,"[7] has adopted Rule of Impeachment 10, which broadly prohibits political representatives from talking to their constituents about "any matter relating to the merits of

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the State."); *see also* TEX. CONST. art. II, § 1 (describing how the "powers of the Government" are divided into three distinct departments: the legislative, the executive, and the judicial).

[4] *Kinney v. Barnes*, 443 S.W.3d 87, 90 (Tex. 2014) (quoting TEX. CONST. art. I, § 8 interp. commentary).

[5] TEX. CONST. art. I, §§ 8 ("Every person shall be at liberty to speak, write or publish his opinions on any subject, being responsible for the abuse of that privilege; and no law shall ever be passed curtailing the liberty of speech or of the press."), 27 ("The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance.").

[6] On June 21, 2023, the Senate adopted "Rules of Impeachment" in Senate Resolution 35 by a vote of twenty-five "yeas" and three "nays." Those Rules can be found at https://senate.texas.gov/_assets/coi/docs/SR_35.pdf.

[7] TEX. CONST. art. XV, § 3.

the proceedings before the court of impeachment."[8] In a corollary measure, Rule 10 also requires the presiding officer of the impeachment court to issue a "gag order."[9] The presiding officer has complied by issuing an extremely broad suppressive order that threatens representatives with contempt, criminal confinement of up to six months, and monetary penalties.[10] In effect, if not by design, the gag

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[8] Rule 10(b) states:

> No members of the court, staff of members of the court, presiding officer of the court, and legal counsel of the presiding officer shall discuss or comment on any matter relating to the merits of the proceedings before the court of impeachment with Warren Kenneth Paxton, Jr., and his counsel, the House Board of Managers and their counsel, or any persons other than members of the court, the presiding officer of the court, legal counsel to the presiding officer, or staff or legal counsel to members of the court.

[9] Rule 10(a) requires that "[a] gag order that meets state and federal law standards shall be issued by the presiding officer of the court as soon as practicable after adoption of the rules for the court of impeachment."

[10] To my knowledge, a gag order like the one at issue here has never been adopted in any state or national impeachment proceeding, including those President Donald J. Trump recently endured. Among other prohibitions, the gag order here provides:

> Any member of the court; member of the House of Representatives . . . or attorney, employee or agent of any of these individuals shall not furnish any statement or information, or make or authorize the making of any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication, if the person making the statement knows or reasonably should know that it will have a substantial likelihood of materially prejudicing the trial of impeachment, pose a serious threat to the constitutional guarantees to a fair trial, or impair the court's ability to maintain a fair and impartial court.

order chills our representatives from engaging in constitutionally protected attributes of our government.

Additionally, in Rule of Impeachment 31, the Senate prohibits the "spouse of a party to the court of impeachment" from "vot[ing] on any matter, motion, or question, or participat[ing] in closed sessions or deliberations."[11] Though not specifically stated, Rule 31 automatically

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The gag order can be found at https://senate.texas.gov/_assets/coi/docs/Gag-Order-20230717.pdf. The gag order also explains that these prohibited "statements and information include, but are not limited to, the following":

1) statements concerning the expected testimony of any party or witness, or the character, reputation or credibility of any party, witness, or attorney involved in the trial of impeachment or members of their office;
2) statements concerning the existence or contents of any statement given by a party, or the refusal or failure of any person related to this trial of impeachment to make a statement;
3) statements concerning the nature of any evidence which may be presented;
4) the identity or nature of any physical evidence expected to be presented;
5) any opinion as to whether the articles of impeachment should be dismissed or sustained against Warren Kenneth Paxton, Jr.;
6) subpoenas issued by the court or information received pursuant to the Discovery Order, a subpoena, or other order of the court; or
7) any information the person knows or reasonably should know is likely to be inadmissible as evidence at the trial of impeachment and would, if disclosed, create a substantial risk of prejudicing an impartial trial or the ability to maintain a fair and impartial court.

[11] Rule 31 provides:

A member of the court who is the spouse of a party to the court of impeachment is considered to have a conflict pursuant to Article III, Section 22, of the Texas Constitution. Such member of the court shall be seated in the court of impeachment pursuant to Article 15 of the Texas Constitution. However, such

disqualifies the representative for Senate District 8—Senator Angela Paxton—from participating and voting in the impeachment trial because Attorney General Paxton is her husband.

In this mandamus proceeding, Texas citizens, registered voters, and constituents challenge these legislative actions as unconstitutionally silencing and neutering their representatives. Steven Hotze, M.D.; Allesan Paige Streeter; and the Honorable Molly White (the relators) sued the Texas State Senate; Austin Osborn, the Sergeant-at-Arms for the Texas State Senate; and Dan Patrick, the Lieutenant Governor of the State of Texas (the real parties in interest). The relators assert that Rule 10 and the gag order violate their right to freely speak to and petition their government.[12]

Additionally, relator Streeter, a constituent of Senate District 8, is represented by Senator Paxton. Because the Texas Constitution requires that the impeachment of the Attorney General "shall be tried by the Senate," which includes Senator Paxton, she challenges Rule 31 as unconstitutionally depriving her—and approximately one million other residents of Senate District 8—of representation in this matter of statewide importance.

> member of the court shall not be eligible to vote on any matter, motion, or question, or participate in closed sessions or deliberations.
>
> Notwithstanding any other rule, a member of the court who is the spouse of a party to the court of impeachment shall be considered present and eligible only for the purpose of calculating the number of votes required for any and all matters, motions, and questions under these rules.

[12] *See* TEX. CONST. art. I, §§ 8, 27.

The relators seek (1) a declaration that Rules 10 and 31 and the gag order are unconstitutional and invalid and (2) injunctive relief preventing their enforcement. After the trial court denied their application for a temporary restraining order, the relators sought a writ of mandamus compelling the trial court to vacate its order and grant their application.

I would grant the requested mandamus relief. Although "[t]he Senate sitting in an impeachment trial is just as truly a court as is this court," "[t]he courts, in proper cases, may always inquire whether any department of the government has acted outside of and beyond its constitutional authority."[13] Importantly, "[t]he acts of the Senate, sitting as a court of impeachment, are not exempt from this judicial power."[14] As judges, we must serve as faithful guardians of the Constitution.[15] When a matter is within our jurisdiction, "the Constitution does not permit judges to look the other way; we must call foul when the constitutional lines are crossed."[16] Here, those lines have been crossed, and we must not turn a blind eye. Because the relators' requested injunctive relief is necessary to protect vital constitutional rights that go to the heart of political speech and representation, I respectfully dissent to the denial of the petition for writ of mandamus.

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[13] *Ferguson v. Maddox*, 263 S.W. 888, 890, 893 (Tex. 1924).

[14] *Id.* at 893. Accordingly, I disagree with the assertions of immunity to suit by the real parties in interest.

[15] *Cf.* THE FEDERALIST No. 78, at 494 (Alexander Hamilton) (Benjamin F. Wright, ed. 1961) (describing the judges as "guardians of the Constitution").

[16] *Gundy v. United States*, 139 S. Ct. 2116, 2135 (2019) (Gorsuch, J., dissenting).

I

Our Constitution grants an "inviolate" right to "speak . . . on any subject."[17] At the very core of this protection lies political expression.[18] Speech between constituents and their representatives about the merits of impeachment and removal is undoubtedly political. In many ways, it is archetypically political.[19]

A robust defense of this important right requires courts to view any restraint of political speech with a strong and healthy dose of skepticism.[20] If a restraint amounts to a "pre-speech sanction" or "prior restraint," it is "presumptively unconstitutional."[21] Orders forbidding speech activities before the communications occur—including gag orders—"are classic examples of prior restraints."[22] Because gag orders "rest at the intersection of two disfavored forms of expressive limitations"—prior restraints and content-based restrictions—they "warrant a most rigorous form of review."[23] And when a content-based,

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[17] TEX. CONST. art. I, §§ 8, 29. The speaker, however, may be held "responsible for the abuse of that privilege." *Id.* art. I, § 8.

[18] *King St. Patriots v. Tex. Democratic Party*, 521 S.W.3d 729, 746 (Tex. 2017) (Devine, J., concurring).

[19] *See, e.g.*, *Gentile v. State Bar of Nev.*, 501 U.S. 1030, 1034-35 (1991) (noting that speech critical of alleged governmental misconduct lies at "the very center of the First Amendment").

[20] *See Kinney v. Barnes*, 443 S.W.3d 87, 90 (Tex. 2014) ("Commensurate with the respect Texas affords this right [to be at liberty to speak] is its skepticism toward restraining speech.").

[21] *Id.*; *Davenport v. Garcia*, 834 S.W.2d 4, 9 (Tex. 1992).

[22] *Alexander v. United States*, 509 U.S. 544, 550 (1993).

[23] *In re Murphy-Brown, LLC*, 907 F.3d 788, 796-97 (4th Cir. 2018).

prior-restraint rule or gag order is imposed on political representatives participating in an impeachment trial, it must be examined with even greater scrutiny and care to ensure no improper infringement on the representatives' freedom to speak to and communicate with their constituents. In other words, the fundamental process that undergirds our representative government must be protected under the strictest scrutiny.

Although the Court has never addressed a prior-restraint rule or gag order restraining political speech in an impeachment context, we have adopted a test for gag orders in civil judicial proceedings. In that context, a gag order "will withstand constitutional scrutiny only where there are specific findings supported by evidence that (1) an imminent and irreparable harm to the judicial process will deprive litigants of a just resolution of their dispute, and (2) the [gag order] represents the least restrictive means to prevent that harm."[24] Neither Rule 10 nor the gag order satisfies this standard, let alone the more rigorous standard that should apply to prior restraints on political speech and discourse between the people and their elected representatives.

As to imminent and irreparable harm, the presiding officer found: (1) there has been "extensive publicity" and out-of-court inflammatory and prejudicial statements; (2) the individuals that made these statements "will likely continue to make public prejudicial and inflammatory statements" and there is a "substantial likelihood that members may be inadvertently exposed to prejudicial publicity"; (3) because the jury is set by the Constitution without a jury pool, "any

[24] *Davenport*, 834 S.W.2d at 10.

prejudicial bias that occurs would irreparably taint the impartiality of the court"; (4) if members of the court are exposed to these types of statements, "it could impact the member's ability to render a fair and impartial verdict"; and (5) "there is a substantial likelihood that members' initial opinions may not be set aside."[25] None of these findings justify the overly broad gag order.

An impeachment trial will inevitably generate extensive publicity, media coverage, and news. That is true. But "[p]rominence does not necessarily produce prejudice";[26] "juror *impartiality* . . . does not require *ignorance*";[27] and unlike conventional jurors, political representatives are accustomed to publicity, inflammatory statements, and controversy.[28] Indeed, politicians frequently engage in the rough and tumble of political life, sifting through and ignoring inflammatory statements to make tough decisions despite controversy or political headwinds. The presiding officer's findings do not account for the nature of an impeachment proceeding and the political character of that court and its members. In my estimation, the findings and evidence don't come close to supporting the conclusion that "an imminent and irreparable harm to the judicial process will deprive litigants of a just

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[25] The findings are included in the gag order at https://senate.texas.gov/_assets/coi/docs/Gag-Order-20230717.pdf.

[26] *Skilling v. United States*, 561 U.S. 358, 381 (2010).

[27] *Id.*

[28] Even jurors, as one court recently noted, "are not that fragile." *Murphy-Brown*, 907 F.3d at 798.

resolution of their dispute."[29] Abstract fears and rank speculation do not justify a prior restraint of this magnitude.

Nor does the public record support the conclusion that the sweepingly broad gag order represents the least restrictive means to prevent any such harm. The presiding officer found that, without the gag order, "there is a substantial likelihood that members may be inadvertently exposed to prejudicial publicity" and "individuals involved in the trial of impeachment will likely continue to make public prejudicial and inflammatory statements." But without any supportive findings or evidence, the gag order applies indiscriminately to "[a]ny member of the court; member of the House of Representatives; party to the trial of impeachment; witness in the trial of impeachment; or attorney, employee, or agent of any of those individuals." There are no findings justifying wholesale restrictions on each category of covered individuals.[30] In addition, the evidence of "inflammatory statements" pertained only to a single "potential witness," a single member of the House Board of Managers, the board's attorneys, and the Attorney General's attorney. The gag order simply assumes—without any evidence at all—that all covered individuals, including parties, lawyers, witnesses, and members of the impeachment court—are identically situated and just as likely to "continue to make public prejudicial and inflammatory statements." Most disconcertingly, however, is the

[29] *See Davenport*, 834 S.W.2d at 10.

[30] *See Murphy-Brown*, 907 F.3d at 799 (concluding that a gag order was not narrowly tailored because, in part, it "included no findings specific to the various individuals it restricted. It treated lawyers no differently from parties, who in turn were treated the same as potential witnesses.").

breadth of Rule 10(b) and the gag order in what type of speech is prohibited. The rule sweeps far beyond legitimate restraint by broadly prohibiting any "discuss[ion] or comment" to individuals not participating in the proceedings "on any matter relating to the merits of the proceedings."[31] The gag order's vaguely articulated and facially overbroad prohibition on extrajudicial statements is just as troubling.[32] "Gag orders should be a last resort, not a first impulse,"[33] and the findings and mandamus record here do not demonstrate any attempt at less-restrictive alternatives.

Ultimately, the primary effect of Rule 10 and the gag order is to prevent political representatives from fulfilling their *duty* to communicate with their constituents about a vital—and historic—political matter of immense public concern. These impossibly broad restrictions on political speech are inconstant with standards we have used in less consequential circumstances and, in my view, are repugnant to the Constitution.

Even though the challenged actions are unconstitutional, the real parties in interest assert that the relators have no injury in fact and, therefore, lack standing to seek redress.[34] In their view, the people are

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[31] *Cf. Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992) (noting that the ordinary meaning of "relating to" is "a broad one").

[32] *See supra* note 10.

[33] *Murphy-Brown*, 907 F.3d at 800.

[34] "To maintain standing, a plaintiff must show: (1) an injury in fact that is both concrete and particularized and actual or imminent, not conjectural or hypothetical; (2) that the injury is fairly traceable to the defendant's challenged action; and (3) that it is likely, as opposed to merely

helpless bystanders with no right of recourse. I don't share that view. In my opinion, the unprecedented constraint on our republican form of government necessarily imbues the constituent relators with standing to bring these constitutional challenges.

When a court of last resort encounters extraordinarily novel circumstances, traditional contours of established doctrines may prove insufficient to safeguard our constitutional rights. When necessary, common-law concepts must expand, consistent with their purpose and history, to allow troubling and unforeseen impairments of constitutional magnitude to be rectified. Freedom of speech, which has been described as an "inalienable human right[]," is "indispensable to the discovery and spread of political truth."[35] As such, political speech "is entitled to the fullest possible measure of constitutional protection."[36] Especially in a moment of great political upheaval for our citizens, it's not only necessary to protect that right but also imperative.

This Court is duty bound to serve the people and to provide a means to legitimately vindicate an unconstitutional act, even if it entails relaxing common-law notions of standing. Although atypical, this concept is not without precedent. In the mid-20th century, the Supreme Court of the United States developed the "overbreadth doctrine" in the

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speculative, that the injury will be redressed by a favorable decision." *Data Foundry, Inc. v. City of Austin*, 620 S.W.3d 692, 696 (Tex. 2021).

[35] *303 Creative LLC v. Elenis*, 143 S. Ct. 2298, 2311 (2023) (quoting *Whitney v. California*, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring)).

[36] *Members of City Council of L.A. v. Taxpayers for Vincent*, 466 U.S. 789, 816 (1984).

First Amendment context.[37] Under that doctrine, a plaintiff may challenge the facial constitutionality of a statute as overbroad "even though constitutionally applicable to the plaintiff and others."[38] "This 'overbreadth doctrine,' thus far reserved for First Amendment cases, is a narrow exception to the general rule of standing that prohibits a plaintiff from asserting the rights of others."[39] Justifications for the doctrine include "provid[ing] breathing room for free expression" and "allow[ing] a litigant (even an undeserving one) to vindicate the rights of the silenced, as well as society's broader interest in hearing them speak."[40] Although exceptions to typical standing rules must be sparing and not casually employed,[41] they nevertheless may be warranted in rare cases, like this one.

The relators have alleged that Rule 10 and the gag order have chilled political speech and dialogue between them and their representatives. In an affidavit, relator Hotze averred that he reached out to two different senators regarding the impeachment and received

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[37] *See, e.g.*, *Dombrowksi v. Pfister*, 380 U.S. 479, 486 (1965); *NAACP v. Button*, 371 U.S. 415, 433 (1963).

[38] *Tex. Workers' Comp. Comm'n v. Garcia*, 893 S.W.2d 504, 518 n.16 (Tex. 1995).

[39] *Id.*; *see Comm'n for Law. Discipline v. Benton*, 980 S.W.2d 425, 435 (Tex. 1998) ("Overbreadth challenges are permitted in the First Amendment context not for the benefit of the litigant, but for the benefit of society, to prevent the statute from chilling the constitutionally protected speech of other parties not before the court.").

[40] *United States v. Hansen*, 143 S. Ct. 1932, 1939 (2023).

[41] *Cf. id.* at 1939 ("Because it destroys some good along with the bad, '[i]nvalidation for overbreadth is "strong medicine" that is not to be casually employed.'" (quoting *United States v. Williams*, 553 U.S. 285, 293 (2008))).

the following responses: "Dear Dr. Hotze, I am sorry, but I am banned from speaking to you about the Paxton Impeachment situation because of Lt. Gov. Patrick's [g]ag order"; and "Hello Dr. Hotze, I am unable to speak on the record about the impeachment proceedings due to gag order by the Court. I hope you can understand." If constituents are unable to challenge the constitutionality of these prior restraints, representatives may yield to unconstitutional constraints for myriad reasons, including for political cover or to evade tough conversations on important public matters with their constituents. In my view, the traditional contours of the common-law standing doctrine should give way to a narrow exception in this unusual circumstance where political representatives are, by virtue of a prior restraint, barred from engaging in political speech with their constituents. In that (hopefully) rare event, a constituent should be able to challenge the constitutionality of the restraint as chilling political dialogue between constituents and their representatives.

For that reason, I believe the relators have standing and are entitled to mandamus relief to avoid the improper impingement of their constitutional rights under Rule 10 and the gag order. For the reasons articulated below, mandamus relief is also warranted because Rule 31 violates constitutional provisions providing that the impeachment of certain officers "shall be tried by the Senate,"[42] which "shall consist of thirty-one members."[43]

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[42] TEX. CONST. art. XV, § 2.

[43] *Id.* art. III, § 2.

II

Under our Constitution, an impeachment proceeding is, by its nature, political in the republican sense of that word: representative.[44] Article XV of our Constitution, which governs impeachment proceedings, does not place the impeachment power in the hands of the judiciary or individuals chosen by state-wide elections or random lot. Rather, the powers to impeach, try the impeachment, and remove certain officers rest with the bicameral branch of government composed of members who represent the people of local districts.[45]

If the House of Representatives votes to impeach one of these officers, including the Attorney General, the impeachment "shall be tried by the Senate,"[46] which "shall consist of thirty-one members."[47] Although the trial is political in nature, the Constitution prescribes the method for assuring it is impartial: "When the Senate is sitting as a Court of Impeachment, the Senators shall be on oath, or affirmation impartially to try the party impeached, and no person shall be convicted without the concurrence of two-thirds of the Senators present."[48]

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[44] *See* THE FEDERALIST No. 10, at 133 (James Madison) (Benjamin F. Wright, ed. 1961) ("A republic, by which I mean a government in which the scheme of representation takes place . . . .").

[45] *See* TEX. CONST. art. XV, §§ 1, 2, 4; *see also id.* art. III, §§ 2, 25, 26.

[46] *Id.* art. XV, § 2.

[47] *Id.* art. III, § 2.

[48] *Id.* art. XV, § 3. Rule 19(b) of the Rules of Impeachment provides that "[t]he following oath is to be administered by the presiding officer of the court to each member of the Senate that is eligible to serve as a juror of the court":

> *"I do solemnly swear or affirm that I will impartially try Warren Kenneth Paxton, Jr., Attorney General of Texas, upon the*

Here, however, the Senate has deprived the people of one district—Senate District 8—of any representation in the upcoming political impeachment trial, regardless of whether their senator is "on oath, or affirmation impartially to try the party impeached." Impeachment Rule 31 requires that "[a] member of the court who is the spouse of a party to the court of impeachment" is considered present for calculating votes but is not "eligible to vote on any matter, motion, or question, or participate in closed sessions or deliberations." Because Senator Paxton's spouse is the subject of the impeachment trial, Rule 31 automatically prohibits her from voting and participating in the impeachment trial.

Legitimate concerns undeniably exist about a senator's ability to neutrally participate and vote in the impeachment trial of a spouse. Anyone who has taken marriage vows would understand why a political representative may be unable to take an oath or affirmation of impartiality or to participate and vote impartially in that situation. But similar concerns also may exist about senators' impartiality when they have partisan or financial interests in the results of an impeachment trial, as the relators allege of other senators who have not been excluded from participating and voting as a juror in the trial. But in either circumstance, Article XV constitutionally commits the question of impartiality to each individual senator in deciding whether to take the oath or affirmation and if so, how to participate in an impeachment trial while remaining faithful to that oath or affirmation. Each senator will

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impeachment charges submitted to me by the House of Representatives and a true verdict render according to the law, and the evidence, so help me God."

be accountable to his or her electorate for that decision.[49] But Article XV does not provide for senators representing people in other districts to collectively make that decision for an individual senator.

In adopting Rule 31, the Senate improperly looks beyond Article XV for authority to exclude Senator Paxton from participating in the impeachment trial as a representative of Senate District 8's constituents. Rule 31 declares that "[a] member of the court who is the spouse of a party to the court of impeachment" has "a conflict pursuant to Article III, Section 22, of the Texas Constitution." That provision of the Constitution provides that "[a] member who has a personal or private interest in any measure or bill, proposed, or pending before the Legislature, shall disclose the fact to the House, of which he is a member, and shall not vote thereon."[50] But given its placement in Article III—"Legislative Department"—and reference to "any measure or bill," Section 22 does not apply when the Senate is acting in a judicial, rather than legislative, function as a "Court of Impeachment" under Article XV, Section 2. When the Senate engages that function, Article XV provides the more specific—and only—recusal rule.

While the Senate is generally authorized to "determine the rules of its own proceedings,"[51] that does not give the legislative body carte blanche to contravene specific provisions of the Constitution. Because Article XV speaks directly and expressly to recusal of senators from

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[49] If egregious enough, the senator could also be accountable to the Senate body for punishment or expulsion. *See* TEX. CONST. art. III, § 11.

[50] *Id.* art. III, § 22.

[51] *Id.* art. III, § 11.

impeachment proceedings, the Senate cannot adopt different rules. And it certainly cannot do so when said rules exclude an entire populace from political representation in the impeachment process by preventing their elected representative from participating in impeachment proceedings for reasons other than those stated in the Constitution.

Relator Streeter, as a constituent in Senate District 8, has been deprived of Senator Paxton's representation in the upcoming impeachment trial without regard to her being "on oath, or affirmation impartially to try the party impeached."[52] Accordingly, she has been injured, has standing to raise a constitutional challenge to Rule 31, and is entitled to mandamus relief.[53]

* * *

An impeachment trial is unlike any other proceeding in our republican form of government. By constitutional design—and unlike conventional judicial trials—it's necessarily political. Representatives of the people of local districts are tasked with the responsibility of sitting as a court on their constituents' behalf to try the impeachment and determine whether a public officer should be removed from office. While the Senate has wide latitude in how it conducts the impeachment trial, those proceedings must nonetheless comport with our Constitution.

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[52] *Id.* art. XV, § 3.

[53] Because the injury concerns the members of a *local* senate district being deprived of political *representation*, it isn't based merely on "a plaintiff's status as a voter," "on the basis of the results" of an election, or on an injury "sustained by the public at large" for which claims of standing have been denied. *See Brown v. Todd*, 53 S.W.3d 297, 302 (Tex. 2001).

Because the gag order and Impeachment Rules 10 and 31 fail to do so, I would grant mandamus relief. I respectfully dissent.

John P. Devine
Justice

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