Supreme Court of Texas

No. 24-0884

In re Texas House of Representatives,

Relator

On Petition for Writ of Mandamus

JUSTICE YOUNG delivered the opinion of the Court.

On the eve of an execution scheduled months before, a committee of the Texas House of Representatives issued a subpoena to death-row inmate Robert Roberson. By requiring his testimony on a date after the scheduled execution, the subpoena created a conflict involving all three branches of government. The judicial branch had determined that Roberson's challenges to his sentence lacked merit, and the executive branch had declined to use its exclusive authority to grant clemency, including the governor's sole authority to issue a single 30-day stay of execution. The committee then turned to a district court, claiming that the legislature's power to compel testimony in aid of its policymaking function trumped any scheduled execution. The district court granted a temporary restraining order, which the Court of Criminal Appeals set aside. Finally, the committee turned to this Court and invoked our original jurisdiction.

The dispute before us has nothing to do with Roberson's guilt or innocence or with the propriety of his sentence, and we express no view on any of those criminal-law matters. Instead, we must decide the important but unresolved separation-of-powers question presented: whether the legislature's authority to compel testimony requires the other branches to yield in the face of a scheduled execution. That issue does not arise under the criminal law; it instead asks how the People of Texas have structured their government and to which governmental entities they have allocated specific kinds of authority. In other words, when two or more branches of government issue commands that cannot all be obeyed, which of them must yield?

Confronted with this novel separation-of-powers question, which could very well arise again if left unresolved, we temporarily enjoined impairment of Roberson's ability to comply with the subpoena. That order necessarily had the consequence of preventing the execution from proceeding as planned.

The Court has received submissions from the parties and multiple amici. We conclude that under these circumstances the committee's authority to compel testimony does not include the power to override the scheduled legal process leading to an execution. We do not repudiate legislative investigatory power, but any testimony relevant to a legislative task here could have been obtained long before the death warrant was issued—or even afterwards, but before the execution. Accordingly, our decision to deny relief is based not on a lack of jurisdiction, but on the merits: if the legislature lacks a judicially enforceable right under these circumstances, no lawful basis exists to

support a civil court's grant of injunctive relief.

Aside from litigation, the legislative and executive branches may reach agreements with each other through the political process and through the deployment of the various tools that each branch has, so long as they do not violate the Constitution or laws. *See State Bd. of Ins. v. Betts*, 308 S.W.2d 846, 852 (Tex. 1958) (noting that "[c]o-ordination or co-operation of two or more branches or departments of government in the solution of certain problems is both the usual and expected thing"). And beyond individual cases in which testimony is desired, the legislature retains the authority to amend the general laws—or its rules, which purportedly prevented the committee from obtaining Roberson's testimony after the subpoena issued but before the execution was scheduled to occur. The judiciary takes no part in any such dialogue or determination. Rather, as in this case, we address the wholly separate question of whether there is a judicially enforceable basis for the legislature to effectively delay an execution when the other branches have *not* come to any agreement. We conclude that here there is none. Accordingly, we deny the committee's petition.

I

Roberson was sentenced to death in 2003 for killing his two-year-old daughter. The Court of Criminal Appeals affirmed his sentence on direct appeal. *Roberson v. State*, No. AP-74,671, 2002 WL 34217382, at *12 (Tex. Crim. App. June 20, 2007). State and federal courts denied his habeas petitions. *E.g.*, *Ex parte Roberson*, No. WR-63,081-05, 2024 WL 4504434, at *1 (Tex. Crim. App. Oct. 16, 2024); *Roberson v. Stephens*, 619 F. App'x 353, 359 (5th Cir. 2015). In 2016, a state district court ordered

a death warrant commanding the director of the correctional institutions division of the Texas Department of Criminal Justice (the department) to enforce the sentence. The Court of Criminal Appeals stayed that execution. *Ex parte Roberson*, No. WR-63,081-03, 2016 WL 3543332, at *1 (Tex. Crim. App. June 16, 2016). Following various further proceedings, on July 1, 2024, the district court again issued a warrant requiring enforcement of Roberson's sentence, this time on October 17, 2024, at some time after 6:00 p.m. Multiple subsequent attempts by Roberson in state and federal courts to prevent the execution were unsuccessful, as were efforts to obtain executive-branch relief from the Texas Board of Pardons and Paroles or from the governor.

On October 16—the day before the scheduled execution—the House Committee on Criminal Jurisprudence issued a subpoena commanding the sergeant-at-arms to summon Roberson to testify at the Texas State Capitol on October 21. According to the committee, it wished to question Roberson about his case and its implications for article 11.073 of the Code of Criminal Procedure after learning additional facts from other witnesses at a hearing earlier that day. *See* Tex. Code Crim. Proc. art. 11.073 (allowing habeas corpus relief when a person shows that he would not have been convicted had certain scientific information been presented at trial).

Several hours before the scheduled execution, the U.S. Supreme Court denied Roberson's application for a stay of execution and petition for a writ of certiorari. *Roberson v. Texas*, 604 U.S. __, 2024 WL 4521766, at *1 (Oct. 17, 2024). Also on October 17, the committee sued the department in state district court, seeking a declaration that the

department had no authority to execute Roberson when doing so would prevent him from complying with the subpoena. The committee sought a temporary restraining order as well as temporary and permanent injunctions requiring the department to comply with the subpoena and prohibiting the department from executing Roberson.

After the trial court signed a temporary restraining order, the department filed a mandamus petition in the Court of Criminal Appeals, which granted the petition. *In re Tex. Dep't of Crim. Just.*, No. WR-96,121-01, 2024 WL 4512269, at *2 (Tex. Crim. App. Oct. 17, 2024). The committee then filed what it styled as a "petition for writ of injunction" in this Court along with an emergency motion for temporary relief.

The tumultuous events of October 17, culminating in the filings in this Court, reflected an as-yet-unresolved question concerning the relative authority of the three branches of our government when pitted against each other in this context. We issued an order temporarily enjoining the department from "impairing Mr. Roberson's compliance with the Subpoena and Writ of Attachment issued by the Committee on Criminal Jurisprudence, including by executing Mr. Roberson, until further order of this Court." *In re Tex. House of Representatives*, __ S.W.3d __, 2024 WL 4521051, at *1 (Tex. Oct. 17, 2024) (order). Following the receipt of briefing, we may now definitively resolve the question presented for this and future cases.

II

"We begin by ensuring that we have jurisdiction to reach the merits." *In re Dallas County*, 697 S.W.3d 142, 149 (Tex. 2024). This Court always has jurisdiction to determine its own and the lower courts'

jurisdiction. *Abbott v. Mexican Am. Legis. Caucus*, 647 S.W.3d 681, 699 (Tex. 2022); *Hous. Mun. Emps. Pension Sys. v. Ferrell*, 248 S.W.3d 151, 158 (Tex. 2007). The department raises several challenges to our jurisdiction, none of which has merit.

A

The department's primary objection is that we lack jurisdiction because an order enjoining it from carrying out a lawful execution would violate the Texas Constitution's separation-of-powers provision. *See* Tex. Const. art. II, § 1. This objection, however, relates not to jurisdiction but to the merits. The committee claims relief on the ground that the Texas Constitution and laws give the legislature substantive authority to which the other branches must yield despite a pending execution. *Whether* that contention is correct raises a justiciable question concerning the distribution of governmental authority—a civil-law question about the separation of powers. A lack of jurisdiction would mean that we could not adjudicate the dispute even if the committee were clearly right.

The department's position, however, is that the committee is clearly *wrong*—and, for that reason, that we lack jurisdiction to afford relief. The circularity is self-evident, and it would be a contradiction in terms for us to say that "we lack jurisdiction to address an issue because we have concluded that the issue must be resolved in favor of one of the parties." That question—whether the committee's position is meritorious such that the constitutional authority of the legislative branch requires the other branches to yield—is the very reason we *have* jurisdiction, not a reason we lack it.

It is not unusual for a court order—including our temporary order

in this case—to implicate the authority of other branches of government. For example, the legislature alone may enact laws. *Id.* art. III, § 1. When a court enjoins the enforcement of a statute, its order obviously affects the work of the legislature in drafting the statute, the work of the governor in signing it into law (or of the legislators who overrode the governor's veto), and the work of the executive-branch officials who would otherwise enforce it—not to mention the underlying principle of self-government, under which the People agree to be governed by the policies adopted by their elected representatives. Yet enjoining the enforcement of an unconstitutional law does not violate the separation of powers—it is part and parcel of judicial authority. After all, "[i]t is emphatically the province and duty of the judicial department to say what the law is," *Marbury v. Madison*, 5 U.S. 137, 177 (1803), and deciding *whether* a law violates the Constitution is not beyond a court's jurisdiction on the ground that getting the call wrong might violate the separation of powers. Instead, at least when the question arises in an otherwise justiciable case, ensuring the consistency of a statute and the Constitution is "the very essence of judicial duty." *Id.* at 178. Of course, if a court is *wrong* about constitutionality, its decision may well violate the separation of powers; appeals remedy such errors. But a court that ultimately concludes that the statute *is* constitutional could hardly be described as having lacked jurisdiction all along.

The same is true with respect to how the courts assess executive-branch actions. If a court enjoins the enforcement of an agency rule, or enjoins the grant of a permit that is within an agency's exclusive authority to issue, the order affects the executive-branch agency that

adopted the rule (or granted the permit) and sought to enforce it (or to allow the permitted activity). But that does not insulate agency rules or the award of permits from judicial review. *E.g.*, *Tex. State Bd. of Exam'rs of Marriage & Fam. Therapists v. Tex. Med. Ass'n*, 511 S.W.3d 28, 33 (Tex. 2017) (explaining the standard of review of agency rules); *Dyer v. TCEQ*, 646 S.W.3d 498, 505 (Tex. 2022) (describing the process of scrutinizing permits challenged by a third party). A court may err in its conclusion—but the fact that a rule or a permit turns out to have been valid all along does not mean that the court lacked jurisdiction to *determine* its validity. And when courts conclude that the law requires it, they also have jurisdiction (in proper cases, of course) to issue injunctions and writs directing the actions of officials despite the obvious interference with their duties and the fact that those duties are not properly undertaken by the judicial branch itself. *E.g.*, *State v. Hollins*, 620 S.W.3d 400, 410 (Tex. 2020).

Despite its high-profile and emotion-laden subject matter, this case is not analytically different for jurisdictional purposes. Indeed, the basis for our jurisdiction is especially palpable here because of the antecedent merits question of which branch may determine if or when a lawful execution takes place. The judicial branch, including the State's highest court for criminal-law matters, has determined that Roberson should be executed. The executive branch has determined that clemency is unwarranted and thus seeks to carry out the judiciary's command, which was a warrant issued at the request of a prosecuting attorney. But the legislative branch contends that its subpoena for Roberson to testify before a committee requires subordinating the death warrant and

the executive branch's refusal to delay enforcing it. Thus, the district court's death warrant for October 17 and the committee's subpoena for October 21 were mutually exclusive commands; the department could not obey both.

With competing claims from (and in some instances within) the three branches of government, it falls to this Court to resolve as a matter of law which branch's authority must prevail in this situation. In properly adjudicated cases, "[t]he final authority to determine adherence to the Constitution resides with the Judiciary." *W. Orange-Cove Consol. Indep. Sch. Dist. v. Alanis*, 107 S.W.3d 558, 563 (Tex. 2003). Resolving the question today reduces the likelihood of future confusion or doubt should the circumstances that unfolded on October 17 recur.

B

As a distinct jurisdictional objection, the department also contends that "this Court's intrusion into the executive's carrying out of a lawfully imposed sentence of death" constitutes "an impermissible exercise of criminal habeas jurisdiction." That contention is doubly wrong. An order granting the committee's petition would be neither an exercise of habeas jurisdiction nor an exercise of jurisdiction over a criminal-law matter.

"The purpose of a writ of habeas corpus is to obtain a speedy and effective adjudication of a person's right to liberation from illegal restraint." *Ex parte Kerr*, 64 S.W.3d 414, 419 (Tex. Crim. App. 2002) (first citing *Blackledge v. Allison*, 431 U.S. 63, 72 (1977); and then citing *Ex parte Ramzy*, 424 S.W.2d 220, 223 (Tex. 1968)). To achieve that purpose, a writ of habeas corpus requires a person to be brought into court so "that the lawfulness of the restraint may be investigated and

determined." *Johnson v. Eisentrager*, 339 U.S. 763, 778 n.10 (1950) (quoting *Habeas Corpus*, 5 The Oxford English Dictionary 2 (1933)).

Here, an order from this Court would not require the department to present Roberson in court. Nor would the order question the lawfulness of Roberson's restraint or sentence of death any more than if Roberson (or any other inmate) were brought into a court to testify as a witness in another defendant's trial, as is authorized by law. *See, e.g.*, Tex. Code Crim. Proc. art. 24.13. Assuming the validity of the committee's subpoena, the order would instead merely ensure compliance with that subpoena. After Roberson's discharge by the committee, the department could proceed in accordance with a lawfully issued death warrant.

In addition, whether the legislature may temporarily prevent an execution by serving a subpoena on a death-row inmate is a civil-law question. "To determine whether a case is a criminal law matter, we look to the essence of the case to determine whether the issues it entails are more substantively criminal or civil." *Heckman v. Williamson County*, 369 S.W.3d 137, 146 (Tex. 2012). Criminal-law matters—such as guilt or innocence, the propriety of a sentence, the criminal nature of particular conduct proved to have occurred, or compliance with the procedural guarantees of the federal and Texas Constitutions in a given case—have nothing to do with the proceeding before us. The issue presented here implicates the separation-of-powers provision of the Texas Constitution and the Constitution's larger structure, "not any provision in the Code of Criminal Procedure nor any other criminal statute." *Id.* at 147 (quoting *Harrell v. State*, 286 S.W.3d 315, 318 (Tex. 2009)). And "the

mere existence of some criminal-law question, characteristic, or context will not transform a dispute that is fundamentally civil into a criminal law matter." *Tex. Propane Gas Ass'n v. City of Houston*, 622 S.W.3d 791, 798 (Tex. 2021).

We have held, for example, that the following were civil matters: (1) whether a city had authority to regulate the liquefied-petroleum-gas industry, even though the city's ordinances could result in criminal fines, *id.* at 793; (2) whether a county and its judges had violated the plaintiffs' right to counsel in criminal cases, *Heckman*, 369 S.W.3d at 146; and (3) whether a court could order prison officials to withdraw money from an inmate trust account, *Harrell*, 286 S.W.3d at 316; *see also Comm'rs' Ct. of Nolan County v. Beall*, 81 S.W. 526, 528 (Tex. 1904) (stating that "a suit to recover damages for false imprisonment" was a civil case that could involve "a question of criminal law"). Far more than questions like those, the distribution of authority among the various governmental entities created by the Constitution and our laws is inherently a question of civil law, even if its answer will have consequences in criminal contexts.

We have long recognized that the adjudication of criminal cases may "incidentally involve a question of civil law," *Heckman*, 369 S.W.3d at 149 (quoting *Beall*, 81 S.W. at 528), which is unsurprising. The ownership of property may be relevant to whether a property right was criminally violated, for example. In such instances, this Court may not exercise direct review over a conviction, but that does not make our civil-law holdings any less authoritative—just as we do not review decisions of federal courts sitting in diversity, even though they are bound by this Court's articulation of Texas law. This case, by contrast, asks a purely

civil question and is properly before us.

For similar reasons, the department is wrong to assert that our temporary order "impermissibly exercise[d] mandamus jurisdiction over the Court of Criminal Appeals." Our temporary order did not command the Court of Criminal Appeals to do anything. And if we were to grant the writ requested by the committee, it would be directed to the department, not the court. A writ of mandamus, moreover, would not require the trial court to reinstate a temporary restraining order but would independently command the department's director to comply with the committee's subpoena.

C

The department's remaining objections are likewise unpersuasive. First, the department argues that we may not grant mandamus relief against the department because it is "an entity" and that we may not grant relief against individual department officials because they are not executive officers listed in Article IV, § 1 of the Constitution. We reject the department's attempt to remove itself and all its officials from the reach of our writ authority. We may issue writs of mandamus against "any officer of state government except the governor, the court of criminal appeals, or a judge of the court of criminal appeals." Tex. Gov't Code § 22.002(a). That includes "the heads of State departments and agencies who are charged with the general administration of State affairs," *In re Nolo Press/Folk Law, Inc.*, 991 S.W.2d 768, 776 (Tex. 1999), such as the banking commissioner, *Chem. Bank & Tr. Co. v. Falkner*, 369 S.W.2d 427, 429 (Tex. 1963). The department's director is the head of a major state agency and is thus "within the small circle to which Section

22.002(a) refers." *Nolo Press*, 991 S.W.2d at 776.

Second, according to the department, we lack original jurisdiction to issue a writ of injunction. *See Lane v. Ross*, 249 S.W.2d 591, 593 (Tex. 1952) ("It is well settled that this court has no original jurisdiction to issue a writ of injunction."). But even if the department is correct, we may construe the committee's petition as seeking a writ of mandamus, as we recently reiterated. *See Dallas County*, 697 S.W.3d at 151. The Court may issue a writ of mandamus ordering the department's director to comply with a legislative subpoena. *See* Tex. Const. art. V, § 3(a); Tex. Gov't Code § 22.002(a). And because the Court has mandamus jurisdiction, it also has jurisdiction to issue a corresponding injunction. *See Dallas County*, 697 S.W.3d at 151; *see also Lane*, 249 S.W.2d at 593 ("In cases in which this court's jurisdiction to issue a writ of mandamus has attached the court necessarily has the correlative authority to issue a writ of injunction to make the writ of mandamus effective.").

* * *

We perceive no other jurisdictional obstacle and therefore proceed to the merits.

III

All separation-of-powers disputes involve competing claims of authority. The easy ones are when only one of the asserted powers is valid. More commonly, however, none of the claims, at least when viewed in isolation, is invalid. Each of the multiple claims of power at issue here is valid and entitled to respect, which is why a separation-of-powers conflict warranting this Court's resolution has emerged.

Specifically, the legislature's power to subpoena witnesses to

investigate facts that could inform future legislation is beyond question. But it is not absolute, at least in the sense that it does not automatically displace, supersede, or eliminate the other equally valid and well-established powers at issue: the judiciary's exclusive authority to render judgment and pass sentence under law, the executive branch's exclusive authority to grant various forms of clemency (including the governor's exclusive authority to stay an execution for up to 30 days), and an executive-branch agency's duty to comply with a valid warrant of execution. These powers do not exist in isolation but converge in a particular context: the death penalty as currently administered.

Under current law, every scheduled execution is preceded by an elaborate and often decades-long process that involves all three branches. The legislature itself defines capital crimes and sets the rules governing how a defendant may be sentenced to death. The judiciary adjudicates capital offenses. And the executive carries out the punishments ordered by the judiciary in compliance with the laws enacted by the legislature after determining whether clemency is authorized and warranted.

A legislative subpoena that would not merely block the executive branch from enforcing a court's death warrant but would require that warrant to expire is, as far as we know, unprecedented—until this case. But that does not mean that the legislative power may be dismissed. To resolve the separation-of-powers dispute, therefore, we proceed to assess the interests of the three branches of government. And we conclude, as a general matter, that the legislature's investigative authority must be accommodated; the other branches may not prevent the legislature from hearing from those whom it reasonably deems necessary when

formulating our State's public policy.

But we also conclude that this general authority, while at its zenith when compliance with it does not materially threaten the prerogatives of the other branches, is at its nadir when its invocation would thwart the considered and long-planned work of the other two branches. When the legislative branch could have obtained desired information well before a scheduled execution but did not—whether because it did not fully perceive the need or because it hoped that some other entity would stay the execution—its interest in obtaining testimony must yield if the other branches are unwilling to dismantle a scheduled execution. Indeed, beyond the interest in its committees' investigations, the legislature as a whole has a larger interest that must be recognized: the legislature itself has created the legal framework for capital punishment, and it is at least doubtful that the legislature's rules authorize one committee to effectively disrupt a carefully calibrated statutory process.

A

Without question, the legislative branch's authority to compel witness testimony is purposefully and necessarily broad because it ensures that the chief policy-making entity within our government may discharge its legislative function armed with information that facilitates that task. "A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change; and where the legislative body does not itself possess the requisite information—which not infrequently is true—recourse must be had to others who do possess it." *Terrell v. King*, 14 S.W.2d 786, 790 (Tex. 1929) (quoting *McGrain v. Daugherty*, 273 U.S.

135, 175 (1927)). Thus, "each house is fully authorized to appoint committees to make investigations and conduct inquiries and gather information with respect to the operation of subsisting laws and the need for their improvement, alteration, or repeal." *Id.* at 789 (citing *M'Culloch v. Maryland*, 17 U.S. 316 (1819)).

The legislature has authority not only to receive testimony but to command it. Our law takes this authority so seriously that contempt of a legislative subpoena is a crime. Tex. Gov't Code § 301.026(a) (a person commits an offense if the person "has been summoned as a witness to testify or produce papers by either house or any legislative committee" and "refuses to appear, refuses to answer relevant questions, or refuses to produce required books, papers, records, or documents"). Texas law also prohibits anyone, whether a subpoenaed witness or otherwise, from "knowingly or wilfully mak[ing] a false statement or misrepresentation of the facts" to a legislator "for the purpose of influencing legislation." *Id.* § 305.021(1).

Our law contemplates legislative authority to compel testimony before a committee "even if the person claims that the testimony or document may incriminate him." *Id.* § 301.025(b). When it does, the legislature is authorized to balance the public interest in the testimony against the interest in prosecuting a particular crime. If a person's testimony is compelled despite self-incrimination concerns, "the person may not be indicted or prosecuted for any transaction, matter, or thing about which the person truthfully testified or produced evidence." *Id.* § 301.025(c). We do not purport to address the mechanics or details of this process; rather, the point is that, at least in some instances, a

legislative subpoena and the accompanying immunity may interfere with the ability of the executive and judicial branches to investigate, prosecute, and adjudicate criminal activity.

This legislative-inquiry power did not originate in Texas law, of course. "[P]ower to secure needed information by such means has long been treated as an attribute of the power to legislate. It was so regarded in the British Parliament and in the Colonial legislatures before the American Revolution; and a like view has prevailed and been carried into effect in both houses of Congress and in most of the state legislatures." *McGrain*, 273 U.S. at 161. The U.S. Supreme Court has recognized that the power of congressional committees "to secure 'testimony needed to enable [Congress] efficiently to exercise a legislative function belonging to it under the Constitution'" is part of "the internal process of Congress in moving within its legislative domain." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959) (quoting *McGrain*, 273 U.S. at 160). "The power of inquiry has been employed by Congress throughout our history," and "[t]he scope of the power of inquiry, in short, is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." *Id.*; *see* James M. Landis, *Constitutional Limitations on the Congressional Power of Investigation*, 40 Harv. L. Rev. 153, 159–68 (1926) (discussing the history of legislative investigation).

Like Texas law, federal law criminalizes contempt of a legislative subpoena. 2 U.S.C. § 192 (criminalizing contempt of Congress); *Gojack v. United States*, 384 U.S. 702, 714 (1966) (confirming that, under appropriate circumstances, a person could be criminally prosecuted for contempt of a congressional subcommittee). And Congress, like the Texas

Legislature, may compel self-incriminating testimony after granting immunity. *See* 18 U.S.C. §§ 6002, 6005; *Kastigar v. United States*, 406 U.S. 441, 445–47 (1972) (discussing immunity statutes).

"Broad as it is, the power is not, however, without limitations." *Barenblatt*, 360 U.S. at 111. As the U.S. Supreme Court has explained, the legislative branch "may only investigate into those areas in which it may potentially legislate or appropriate," and its investigations must respect the separation of powers. *Id.* at 111–12. After all, the other branches of government are not adjuncts of the legislature, much less of a single committee of one house of the legislature. And by interfering with a legal process ordained by the legislature itself, a committee's action, if capable of blocking an execution, could in fact impair the prerogatives of all three branches. We address each of these conflicts in turn.

1

We begin with the judiciary. By the time an execution is imminent, the judicial branch has performed the distinctly judicial duties of rendering judgment, imposing sentence, and adjudicating any appellate or collateral challenges that may be raised. A court, exercising judicial power, must determine the details of an execution. A death warrant is not merely permission for the department to execute an inmate if it chooses. Instead, it is a solemn judicial *command* to enforce a sentence imposed by the court pursuant to a lawful judgment in a specified time, place, and manner. Tex. Code Crim. Proc. art. 43.15(a).

To be clear, this Court plays no role in the adjudication of criminal cases. An individual's guilt or innocence, the weight of the evidence, the

propriety of the sentence, and other such criminal-law matters are final upon the determination of the Court of Criminal Appeals. Once those determinations have been made, the legislature lacks the authority to upend a final judgment of the judiciary. *See* Tex. Const. art. II, § 1. That is, "[a] legislature without exceeding its province cannot reverse a determination once made, in a particular case; though it may prescribe a new rule for future cases." *Engelman Irrigation Dist. v. Shields Bros.*, 514 S.W.3d 746, 754 (Tex. 2017) (quoting *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 222 (1995), in turn quoting The Federalist No. 81, at 545 (Alexander Hamilton) (J. Cooke ed. 1961)).

It was not always this way, as the U.S. Supreme Court described in great detail in *Plaut*. "The Framers of our Constitution lived among the ruins of a system of intermingled legislative and judicial powers," in which legislative bodies would frequently "set aside the judgment and order a new trial or appeal." 514 U.S. at 219. In large measure, "the crescendo of legislative interference" in the work of the courts is what led to the growing need for expressly separating the branches. *Id.* at 221–23. The Texas Constitution, of course, does not merely separate the branches of government by describing them in distinct terms, as the first three articles of the U.S. Constitution do; instead, the sole provision within Article II of the Texas Constitution is our separation-of-powers clause, which underscores the structural limits that inhere in our Constitution no less than in our federal counterpart. *See In re State Bd. for Educator Certification*, 452 S.W.3d 802, 808 & n.39 (Tex. 2014).

2

The executive branch has the duty to comply with a death

warrant—and in so doing, the authority to exercise discretion lawfully reposed in it. *See, e.g.*, Tex. Code Crim. Proc. art. 43.14(a) (providing that the director shall determine and supervise the "execution procedure" of intravenous injection). Beyond that, determining whether the distinctly executive prerogatives of pardon or reprieve are appropriate belongs only to the executive branch. Under our Constitution, the governor alone may delay an execution a single time by up to 30 days, and an executive-branch board, whose members are appointed by the governor and confirmed by the senate, has the sole authority to recommend clemency of any other sort. Tex. Const. art. IV, § 11(b); Tex. Gov't Code § 508.031(a).

"[W]hen courts scrutinize the other branches' actions or enactments, we start with the presumption that the rest of the government, no less than the judiciary, intends to comply with the Constitution." *Borgelt v. Austin Firefighters Ass'n*, 692 S.W.3d 288, 303 (Tex. 2024). But no matter the legislators' motivations, a last-minute subpoena in this specific context threatens to intrude on the executive prerogative. Indeed, a subpoena that requires canceling an execution provides the inmate with greater relief than a gubernatorial reprieve. The governor can grant a reprieve of no more than 30 days. Tex. Const. art. IV, § 11(b). But if a death warrant expires, at least 90 days must elapse before the inmate may be executed. Tex. Code Crim. Proc. art. 43.141(c). Judicial orders, including the one in this case, can also implicate other governmental authority. Our point is not that the subpoena *is* a reprieve or inherently invalid any more than a judicial order would be. If a subpoena (or, presumably, a judicial decree) openly purported to exercise power that it *wished* the executive branch had

exercised but had not, it would be facially invalid. Our point, instead, is that even when other governmental actions are valid in and of themselves, they can impinge on the executive power, thus increasing the burden to establish why the executive branch should yield rather than the other way around.

This principle affects constitutional doctrines in many contexts. For example, the protections of the U.S. and Texas Constitutions' Bills of Rights do not exist to benefit one who is clearly guilty—but by insisting on their observance in all cases, we reduce the temptation to erode future citizens' rights. As in the context of civil liberties, in other words, separation-of-powers decisions contemplate not just a claimed use today but a potential future abuse tomorrow of authority that would improperly shift the balance of power from one (or more) branches to another. Categorically prioritizing a legislative subpoena over a scheduled execution, in other words, would become a potent legal tool that could be wielded not just to obtain necessary testimony but to forestall an execution.

3

Finally, it is mistaken to regard a subpoena from a legislative committee as the *only* relevant legislative interest—as if the legislature's sole goal would be to vindicate obtaining testimony at any cost. To the contrary, we have confirmed the validity of subpoenas seeking legislative testimony, but in at least some contexts—perhaps this one most starkly—such a subpoena could interfere with the legislature's own previously stated directives.

The capital-punishment context presents a particularly detailed

legislative scheme. It is the legislature that made capital murder a crime, Tex. Penal Code § 19.03(a), provided for the penalty, *id.* §§ 12.31(a), 19.03(b), determined the method of execution, Tex. Code Crim. Proc. art. 43.14(a), placed restrictions on the scheduling of executions, *id.* art. 43.141, and authorized the issuance of death warrants, *id.* art. 43.15. Changing the law to restructure the criminal-justice system requires the consent of both houses of the legislature, along with either the governor's approval or a sufficient legislative supermajority to override his veto. For one legislative committee to achieve that outcome unilaterally—and especially through a power that would allow it to achieve that result systematically in any or all capital cases—would mean that the committee could in practice supersede the larger legislative will, not just that of the other branches. More simply, a legislative committee that thwarts an otherwise lawful execution also thwarts the legislature's own command that the laws be enforced.

Redistributing authority in this way would threaten more than just the dignity of other legislators, because the process of bicameralism and presentment protects the people from faction, oppression, and despotism. *See, e.g.*, *INS v. Chadha*, 462 U.S. 919, 946–51 (1983). Any shift of authority presents a grave separation-of-powers concern.

* * *

The committee argues that "there is no intractable conflict here—merely a temporary overlap that can be accommodated without infringing on either branch." Unfortunately, we cannot take such a sanguine view. This is not an instance of "two ships passing in the night." It involves multiple ships demanding the same moorings at the same dock—a

circumstance that if unchanged promises a head-on collision. We now proceed to determine which ship must yield the right of way.

B

While this case presents a novel question, resolving it does not require us to break any new ground in our separation-of-powers jurisprudence. Instead, it requires applying core principles that help ensure the proper functioning of our government.

1

We doubt that any branch of government would disagree with the U.S. Supreme Court's observation that "[e]ven when a branch does not arrogate power to itself, . . . the separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties." *Loving v. United States*, 517 U.S. 748, 757 (1996). This Court has likewise noted that "interference by one branch of government with the *effectual* function of another raises concerns of separation of powers." *In re Turner*, 627 S.W.3d 654, 660 (Tex. 2021) (emphasis added). Ill intent, or one part of the government's effort to colonize the others, is rarely the problem. Separation-of-powers problems can arise when every branch seeks to discharge its duties in utmost good faith. Even then, collisions can occur, and the solution—often easier said than done—is to ensure that no branch is exercising its core authority in a way that negates the ability of a coordinate branch to do so. To take one example, discovery is obviously a proper judicial tool, but the U.S. Supreme Court has observed that, in extraordinary cases, a court could violate the separation of powers by authorizing discovery that "interfer[es] with a

coequal branch's ability to discharge its constitutional responsibilities." *Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 382 (2004).

The committee's argument, of course, depends on this principle supporting its right to issue subpoenas like the one directed to Roberson. According to the committee, executing Roberson would not just impair its investigatory function—it would ensure that the committee can *never* hear from him, thus at least in part destroying its constitutional function. In some contexts and at some points in history, that argument would be quite powerful. If the death penalty were enforced without notice, for example, one could imagine an inmate being called to testify, only to learn that he was selected for execution upon—and perhaps because of—the receipt of the subpoena. Such a dark hypothetical would raise a serious separation-of-powers problem.

But that is worlds away from the context of this or any other capital-punishment case. An execution date in the United States—and certainly in Texas—is typically the culmination of a decades-long process. A person scheduled to be executed in Texas has received maximal legal process, including a jury trial, an automatic direct appeal to the Court of Criminal Appeals, the ability to collaterally attack his conviction or sentence through a habeas petition in state court, the ability to file a habeas petition in federal court, the ability to seek the U.S. Supreme Court's review by filing a petition for a writ of certiorari in each of those stages, the ability to petition the Texas Board of Pardons and Paroles for clemency, and the ability to seek a reprieve from the governor.

Here, for example, Roberson was convicted of capital murder more than 20 years before the recent scheduled execution—and his execution

has been stayed at least once before. That stay in 2016 was granted to address the very statute—article 11.073—that the committee is now examining and about which it seeks Roberson's testimony.

Canceling an execution—so that the inmate may testify, or for some other reason—entails serious consequences. Current law requires at least 90 days before resetting the date and carrying out the sentence. *See* Tex. Code Crim. Proc. art. 43.141(c). The committee contends that the separation-of-powers problem addressed here would be raised whenever the legislature addresses a subpoena to *any* inmate "because there is no legal difference between an execution and any other sentence in this context." But the difference between these two scenarios is self-evident: (1) bringing an inmate from prison to the capitol for a few hours (although we express no view on whether the legislature's investigative power extends to requiring a particular location and manner of testimony) and then returning him to his cell; and (2) canceling an execution scheduled months before when it cannot be rescheduled for at least three months.

One consequence of the lengthy period between setting a date for and then carrying out an execution is the assurance of adequate notice. Whatever one's view of the death penalty in general or in a specific case, the work leading up to an execution guarantees that it will not avoid scrutiny. This circumstance, which Texas law requires and the nature of capital litigation makes largely inevitable, is relevant to the present issue in ways that would not be true in a different context.

Specifically, Roberson was convicted in 2003. Article 11.073 became law in 2013. The date of Roberson's October execution was set

on July 1, 2024. The committee *knew* that Roberson was scheduled for that execution and could have availed itself of any number of past opportunities to obtain his testimony. The facts allegedly giving rise to a need for Roberson's testimony have been public knowledge for years. The last-minute subpoena intruded on the duties of the judicial branch to adjudicate and impose penalties for offenses, as well as the duties of the executive branch to execute judicial sentences and determine the propriety of clemency. The subpoena's command was at odds with the death warrant—a final judicial determination—subjecting the department to mutually exclusive directives.

In other words, while one could imagine a system in which the refusal to honor the subpoena would undermine the legislative prerogative, in the actual system of capital punishment that currently exists, the burden flows the other way. We do not find the committee's argument to the contrary convincing. It contends that it issued its subpoena soon after a hearing at which the committee first realized a need to question Roberson. But the committee does not explain why it held the hearing the day before the execution. There is no dispute that the committee was already aware of Roberson's case, his pending execution, and the fact that article 11.073 was implicated. In fact, at the hearing before the district court, the committee's chair referred to "Robert Roberson's case, which is a case, obviously, that's become very well known in the last several weeks." If anything, that was an understatement.

Further, the lawful purpose of the subpoena is to obtain information the committee needs to make better public policy—not to intervene in Roberson's specific case, which is the function of the other

two branches. But the committee has not shown that only Roberson (or a similarly situated future inmate) has the information the committee seeks. The decades of litigation over his case have produced a wealth of public records. And other people, including Roberson's attorneys, are likely to know any facts relevant to making public policy that are not in those records.

Of course, we do not doubt that the legislature is the proper judge of whom it will benefit from hearing, and the legislature's authority to compel witness testimony is unquestionably valid. The point, instead, is that *this* subpoena has created constitutional conflict because it runs up against equally valid powers of the other branches. In light of that conflict, some showing that it was in fact necessary to delay an execution via subpoena would be expected if the other branches of government must yield to it.

We therefore hold that the Texas Constitution's separation-of-powers provision and our general separation-of-powers jurisprudence do not permit judicial enforcement of a legislative subpoena that would require canceling a long-scheduled execution. In our view, this holding accommodates the interests of all branches of the government. Precisely because every execution must be set so far in advance—and because no execution occurs without massive examination and scrutiny—legislative committees are always on notice that information they may wish to obtain must be sought in advance. Accordingly, our holding recognizes a narrow but necessary limit on the legislature's investigatory power without questioning the legislature's ability to compel testimony from witnesses—including inmates, and even those under sentence of death. We do not, of

course, foreclose the executive branch's ability to use its authority to accommodate even a late legislative request for such testimony. We hold only that such a result is not a judicially enforceable right that a civil court may impose against an executive branch that is unwilling to use its authority in that way.

We disagree that this holding is at odds with Government Code § 301.028, which the committee contends requires the department to honor the subpoena, or a future one like it, by canceling Roberson's execution. That provision requires "[e]ach state agency, department, and office" to "assist any legislative committee that requests assistance." Tex. Gov't Code § 301.028(b). But the separation-of-powers doctrine is of constitutional dimension, and § 301.028(b) can only command the other branches of government to provide assistance that is consistent with the structure of our government.

If it were otherwise, the three branches of government would not truly be separated, because there would be no clear limiting principle. In this context, for example, there would be no logical end to the potential for last-minute subpoenas and the recall of a witness. The legislature cannot demand assistance that amounts to the assisting party's surrender of its own constitutional authority and duties.

This conclusion—that the statute operates broadly, but within constitutional limits—still gives it substantial heft. We are confident, for example, that the executive branch will not deny reasonable access to inmates if a legislative committee genuinely wishes to hear from them at a time that would not require that branch to disregard a judicial warrant; but such a committee cannot, in the name of "proper assistance" or

legislative-inquiry power, effectively usurp or undermine the constitutional prerogatives of the other branches of government.

That does not mean, however, that we completely foreclose the possibility that this Court could order an execution to be halted under appropriate circumstances. For example, the governor undisputedly has the constitutional authority to grant a reprieve of execution for up to 30 days. Tex. Const. art. IV, § 11(b). If the governor were to grant such a reprieve and the department were to ignore that decision, it may be appropriate for the courts to order the department to comply.

2

In addition to constitutional arguments, the department and several amici make procedural attacks on the committee's subpoena, its petition in this Court, and the motives of the committee and its members. The department argues that the subpoena was defective because it was not signed by the speaker of the house, the return of service was signed by an agent of a different committee, and the subpoena was served on Roberson's attorney rather than on Roberson himself. The department also impugns the legislators' motivations, suggesting that the committee's reference to article 11.073 was a thinly veiled guise for obtaining a new trial for Roberson rather than for examining how the law works. Various members of the house, as amici, argue that the committee does not represent the full house in this litigation or that it is not represented by proper counsel.

We need not decide these points. For one thing, deciding the case based on such matters of pleading and practice would solve little. An amended or renewed subpoena could avoid the enumerated technical

problems. Resolving today's case on such grounds, then, would leave the law no clearer than it was on October 17, thus avoiding no constitutional issue but risking a recurrence in this or a future case of the conflict that we instead seek to resolve—a conflict that, by its nature, only can arise at the very last minute.

More importantly, for purposes of our holding, we have assumed the subpoena's validity and that its authority was properly attributable to the legislative branch, not merely to the committee itself. Even with those premises, we have concluded that the committee could not overcome the other branches' authority. Legislative investigatory power, even at its maximum, is insufficient to forestall a long-scheduled execution under the circumstances presented here.

3

There remains a substantial period between now and any potential future rescheduling of Roberson's execution. If the committee still wishes to obtain his testimony, we assume that the department can reasonably accommodate a new subpoena. To the extent that an accommodation is not forthcoming, so long as a subpoena issues in a way that does not inevitably block a scheduled execution, nothing in our holding prevents the committee from pursuing judicial relief in the ordinary way to compel a witness's testimony. We are confident that such a resort to the judiciary will not be needed. Nothing in our opinion expresses any view with respect to other processes—such as those that are available in the criminal courts—that might affect the timing of any execution.

IV

Without hearing oral argument, we deny the committee's petition for writ of mandamus. Today's decision supersedes our order of October 17, 2024, which has no further effect.

Evan A. Young
Justice

OPINION DELIVERED: November 15, 2024