



**KEN PAXTON**  
ATTORNEY GENERAL OF TEXAS

JUDD E. STONE II  
Solicitor General

(512) 936-2834  
Judd.Stone@oag.texas.gov

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**Via eFile**

Blake Hawthorne, Clerk  
Supreme Court of Texas

**Re: No. 23-0111, *In re Maria Teresa Ramirez Morris and Texas Alliance for Life, Inc.***

Dear Mr. Hawthorne:

The State of Texas, by and through Attorney General Ken Paxton, submits this letter brief as amicus curiae in the above-captioned matter.<sup>1</sup>

In less than twenty-four hours, the San Antonio City Council will convene to place a charter amendment on the ballot for the upcoming May 2023 municipal general election that its City Attorney has unequivocally stated would openly violate state law in almost every particular. *See* Justice Policy Petition Background & FAQs, San Antonio City Attorney's Office (Feb. 8, 2023), *available at* <https://tinyurl.com/yckszv98> ("Five of [the six] proposed Charter changes are governed by state law and are unenforceable"); *see also* Pet., Ex. D. While the substance of this proposed charter amendment conflicts with multiple substantive provisions of state law, this mandamus proceeding concerns a procedural problem: the charter amendment plainly violates Texas law's longstanding prohibition on municipal charter amendments that "contain more than one subject." Tex. Loc. Gov't Code § 9.004(d).

This Court should grant the mandamus petition to say so. Because the grab-bag of provisions in the charter amendment concern topics ranging from abortion policy to marijuana decriminalization to the use of chokeholds, it violates the long-established one-subject rule; respondents therefore clearly abuse their discretion by

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<sup>1</sup> No party participated in the preparation of, and no fee has been or will be paid for, the preparation of this letter brief.

certifying and including this charter amendment on the ballot. Relators have no adequate remedy by appeal because, absent relief by way of mandamus, relators' only option is to wait months for resolution by initiating an election contest—something this Court has repeatedly held does *not* constitute an adequate remedy in these circumstances. The Court should also reject respondents' effort to avoid this Court's review by arguing that this mandamus petition should have proceeded in the Court of Appeals first: where, as here, relevant election deadlines are imminent, this Court has routinely permitted relators to seek mandamus relief in this Court first.

### **I. Respondents Clearly Abuse Their Discretion by Certifying and Including the Proposed Charter Amendment on the Ballot.**

Relators have established a “clear abuse of discretion” on the part of respondents because the proposed charter amendment flagrantly violates a long-established provision of Texas law that forbids a municipal charter amendment to “contain more than one subject.” Tex. Loc. Gov't Code § 9.004(d); *see also In re Smith*, 333 S.W.3d 582, 585 (Tex. 2011) (“a public officer has no discretion or authority to misinterpret the law”). This “one-subject rule” is of ancient origin—stretching as far back as Roman times, *see Meyer v. Alaskans for Better Elections*, 465 P.3d 477, 482 (Alaska 2020)—and it finds an analogue in the Constitution of almost every State, including this one, *see* TEX. CONST. art. III, § 35(a) (“[N]o bill . . . shall contain more than one subject”). In interpreting the Texas Constitution's almost identically worded one-subject rule, this Court has observed that “[t]he purpose of the unity of subject requirement is to prevent log-rolling, i.e., the inclusion in a bill of several subjects having no connection with each other in order to create a combination of various interests in support of the whole bill.” *LeCroy v. Hanlon*, 713 S.W.2d 335, 337 (Tex. 1986). Application of the rule ensures that “the people [will] be fairly apprised of the subjects of legislation under consideration.” *Robinson v. Hill*, 507 S.W.2d 521, 524 (Tex. 1974). Legislative bodies may violate the one-subject rule when multiple provisions of a bill do not “relate directly or indirectly to the same general subject and have a mutual connection.” *LeCroy*, 713 S.W.2d at 337.

This Court has explained that the word “subject” means “that which is to be dominated or controlled by the particular law.” *Day Land & Cattle Co. v. State*, 4 S.W. 865, 872 (1887). In other words, the “subject” of a legislative act is “the matter to which the statute relates, and with which it deals, and not what it proposes to do.” *Fahey v. State*, 11 S.W. 108, 158 (Tex. 1899). “[D]ictionary definitions” confirm this Court's century-old understanding: the word “subject” refers to the

topic of regulation, not the means or ends of the regulation. *Jaster v. Comet II Const. Inc.*, 438 S.W.3d 556, 563 (Tex. 2014). For example, Webster’s defines “subject” as the “matter; theme; or topic.” Webster’s Second New International Dictionary 2509 (2d ed. 1959). The American Heritage Dictionary defines “subject” as “a person or thing being discussed or dealt with.” Am. Heritage Dictionary 1735 (5th ed. 2016). And Black’s Law Dictionary defines the word “subject” as “[t]he matter of concern over which something is created.” Black’s Law Dictionary 1723 (11th ed. 2019).

Under these standards, the proposed charter amendment concerns several different “subjects.” As even the San Antonio City Attorney has recognized, this proposed charter amendment contains no fewer than *six* separate subjects. Justice Policy Petition Background & FAQs, *supra*. Those subjects include topics as divergent as abortion, marijuana, no-knock warrants, chokeholds, the creation of the new municipal position of “Justice Director,” and the reduction in penalties for certain state-law crimes such as theft, graffiti, criminal mischief, possession of a controlled substance, driving with an invalid license, and possessing contraband in a correctional facility. *See Pet.*, Ex. A. Each of these topics is a distinct—and highly contentious—area of policy, and they collectively have “no connection with each other.” *LeCroy*, 713 S.W.3d at 337. For example, the charter amendment’s attempt to decriminalize marijuana possession implicates a unique body of federal and state law. *See Tex. Dep’t of State Health Servs. v. Crown Distrib., LLC*, 647 S.W.3d 648, 650 (Tex. 2022). But its effort to set abortion policy runs headlong into a wholly distinct body of state law. *See, e.g.*, Tex. Health & Safety Code chs. 170, 170A, 171 *et seq.*; Tex. Rev. Civ. Stat. arts. 4512.1-4. And its ploy to nullify several state-law criminal offenses founders on a different body of state law still. *See, e.g.*, Tex. Penal Code §§ 28.03(b)(2), 28.08(b)(2), (3), 31.03(e)(2)(A), 31.04(e)(2), 38.114(c).

Respondents attempt to tie this hodgepodge of disparate policy goals together by distilling (at 11) the subject of the charter amendment to “the ‘adopt[ion] of a justice policy that will reduce unnecessary arrests and save scarce resources.’” But this characterization does not describe the topic or subject matter of the regulation; it describes the ultimate *ends* of the charter amendment—“justice policy”—thereby confusing the “matter to which the [charter amendment] relates” with “what it proposes to do.” *Fahey*, 11 S.W. at 158. Indeed, respondents leave no doubt that their conception of the term “subject” is erroneously tethered to the *purposes* of the charter amendment rather than to the topic of regulation, arguing (at 14) that

“[e]very component of the proposed justice policy is related and shares a defined *common purpose*.”

Respondents and the proponents of the ballot initiative also appear to offer an alternative purpose: “law enforcement reform ostensibly designed to make policing in San Antonio more just and equitable.” Resp. 14; *see also* Intervenor Br. 8 (proponents describing the purported single subject as “policing”). This, too, improperly defines the subject of the charter amendment by its goals—achieving justice and equity—rather than its subject matter. In any event, the charter amendment is emphatically *not* limited to just “policing.” As respondents concede (at 14), the charter amendment attempts to have a “multi-faceted effect on policing, prosecution, and incarceration.” To take just one example, one provision of the proposed charter amendment expressly purports to restrict “city staff”—not just police officers—from taking certain actions to “gather information concerning abortion-related crimes.” Pet., Ex. A, § 177(e). And at a minimum, its effort to create a novel municipal position of “Justice Director” is an attempt to alter the composition of municipal government—a distinct “subject” that exists independently of the various provisions attempting to decriminalize a variety of conduct proscribed by state and federal law through a policy of non-enforcement.

## **II. Relators Have No Adequate Remedy by Appeal.**

Relators also have no adequate remedy by appeal. The only alternative to seeking mandamus relief is for relators to wait, allow the voters of San Antonio to vote on a multi-subject amendment, and then bring an election contest to invalidate the entire amendment. *See* Tex. Elec. Code § 233.006(a) (permitting election contests only after the election is held). Respondents believe this remedy is adequate. Resp. 15-17. But this Court has repeatedly held that “[i]f the ballot can be corrected before the election, a post-election contest is an inadequate remedy for mandamus purposes.” *In re Petricek*, 629 S.W.3d 913, 917 (Tex. 2021) (orig. proceeding) (citing *In re Williams*, 470 S.W.3d 819, 823 (Tex. 2015) (orig. proceeding) (per curiam)); *Blum v. Lanier*, 997 S.W.2d 259, 263-64 (Tex. 1999). Because the ballot can be corrected here, a post-election contest is not an adequate remedy, and mandamus is appropriate.

Contrary to respondents’ arguments (at 16-17), respondents have the authority to divide the proposed multi-subject amendment into single-subject amendments in order to comply with state law. *See* Tex. Elec. Code § 52.072(a). In *In re Petricek*,

over 25,000 Austin voters signed a petition to adopt a city ordinance. 629 S.W.3d at 916. Although the city charter required the Austin City Council to use the caption found in the petition on the ballot, the City Council modified the language to reference the cost of the proposed ordinance, as required by state law. *Id.* at 920. This Court concluded that the City Council retained the authority to modify the caption to bring it into compliance with state law. *Id.* at 919.

Here, the San Antonio City Charter states that the charter “may be amended at any time in accordance with the applicable provisions contained in statutes and as provided by the constitution of Texas.” San Antonio City Charter § 163. As described above, the proposed amendment does not comply with the “applicable provisions contained in statutes.” *See supra* 2-4. Because respondents are the authority calling the election, they control the wording of the ballot, Tex. Elec. Code § 52.072(a), and retain the authority to ensure that the proposed amendment is properly submitted to the voters, regardless of how it was presented in the petition.

Thus, this Court need not, as respondents suggest (at 18-19), divide the multi-subject amendment into single-subject amendments itself. That is respondents’ obligation. *Id.* They cite no statute that would prohibit them from doing so, but instead rely on what they perceive as the will of the voters who signed the petition. Resp. 19-20. But it does not thwart the will of the voters, as respondents contend (at 7-8), to ensure that an election takes place in accordance with state law. Because respondents can implement this fix prior to the election, a post-election contest is not an adequate remedy. *In re Williams*, 470 S.W.3d at 823.

Respondents also suggest (at 17) that relators’ petition is an attempt to smuggle in a pre-election challenge to the substance of the amendment and that such challenges are better addressed after the election. Respondents further claim (at 15-16) that the issue is not ripe because the voters have not yet voted. But those arguments misunderstand the nature of relators’ challenge. Relators’ petition seeks to ensure that the correct voting procedures are followed, regardless of the legality of the substantive provisions of the proposed amendment. Texas law guarantees that voters will be permitted to vote on individual charter amendments that contain only one topic apiece. Tex. Loc. Gov’t Code § 9.004(d)-(e). San Antonio voters would be denied that opportunity if the proposed amendment is placed on the ballot as currently presented.

As the Court has previously observed, requiring “an election contest and a second election delays the timely resolution of the proposed charter amendment.” *Blum*, 997 S.W.2d at 264. Therefore, when there is an opportunity to correct a ballot before the election, waiting to address the issue through a post-election contest and, potentially another election, is not an adequate remedy. *In re Williams*, 470 S.W.3d at 823; *Blum*, 997 S.W.2d at 264. Because respondents can correct the ballot now, mandamus is appropriate.

### **III. The Mandamus Petition Is Properly Before this Court.**

Finally, this Court should reject respondents’ attempt (at 2-9) to evade this Court’s review by arguing that the mandamus petition is not properly before it. The Texas Election Code gives this Court jurisdiction to “issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election.” Tex. Elec. Code § 273.061; *In re Williams*, 470 S.W.3d at 821. The Court has not required relators to first proceed through the court of appeals when an election is imminent. *In re Williams*, 470 S.W.3d at 821; *Bird v. Rothstein*, 930 S.W.2d 586, 587 (Tex. 1996) (orig. proceeding); *LaRouche v. Hannah*, 822 S.W.2d 632, 633-34 (Tex. 1992) (orig. proceeding); *Sears v. Bayoud*, 786 S.W.2d 248, 249-50 & n.1 (Tex. 1990) (orig. proceeding); *Coalson v. City Council of Victoria*, 610 S.W.2d 744, 747 (Tex. 1980) (orig. proceeding); *see also In re Woodfill*, 470 S.W.3d 473, 481 (Tex. 2015) (orig. proceeding) (rejecting argument that mandamus must first be sought in the district court).

Such is the case here. As described by relators (at 3), and not disputed by respondents, the election in which the proposed amendment would be voted on must be ordered by the City Council by February 17. *See* Tex. Elec. Code § 3.005(c) (requiring order 78 days in advance).<sup>2</sup> That order must include the measures that will be voted on at the election. *Id.* § 3.006. Thus, as of February 17, the measures to be presented on the ballot will be fixed, and it will be impossible for the City Council to separate the multi-subject amendment into single-subject amendments in accordance with state law. The imminent and irrevocable action by the City Council provides the compelling circumstances that warrant seeking relief from this Court in the first instance. Tex. R. App. P. 52.3(e).

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<sup>2</sup> Texas Secretary of State, *Important Election Dates 2022-2024*, <https://www.sos.state.tx.us/elections/voter/important-election-dates.shtml#2023>

Respectfully submitted.

/s/ Judd E. Stone II  
JUDD E. STONE II  
Solicitor General

**CERTIFICATE OF SERVICE**

On February 15, 2023, this letter was served on Eric Opiela, lead counsel for relators, via [eopiela@ericopiela.com](mailto:eopiela@ericopiela.com), Donna K. McElroy, lead counsel for respondents, via [dmcelroy@dykema.com](mailto:dmcelroy@dykema.com), and Michael Siegel, lead counsel for intervenors, via [mke@groundgametexas.org](mailto:mke@groundgametexas.org).

/s/ Judd E. Stone II  
JUDD E. STONE II

**CERTIFICATE OF COMPLIANCE**

Microsoft Word reports that this letter contains 2,327 words, excluding exempted text.

/s/ Judd E. Stone II  
JUDD E. STONE II



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Maria Mendoza-Williamson on behalf of Judd Stone  
Bar No. 24076720  
maria.williamson@oag.texas.gov  
Envelope ID: 72799195  
Status as of 2/15/2023 2:59 PM CST

Associated Case Party: City of San Antonio City Council

Name	BarNumber	Email	TimestampSubmitted	Status
Christopher Kratovil		ckratovil@dykema.com	2/15/2023 2:52:17 PM	SENT
Jennifer Schmitt		jschmitt@dykema.com	2/15/2023 2:52:17 PM	SENT
Sandra LeeYoung		syoung@dykema.com	2/15/2023 2:52:17 PM	SENT
Donna KayMcElroy		dmcelroy@dykema.com	2/15/2023 2:52:17 PM	SENT
Diane Roth		droth@dykema.com	2/15/2023 2:52:17 PM	SENT
Brooke Bohlen		bbohlen@dykema.com	2/15/2023 2:52:17 PM	SENT

Associated Case Party: Ground Game Texas

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Siegel		mike@groundgametexas.org	2/15/2023 2:52:17 PM	SENT

Associated Case Party: Act 4 SA

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Siegel		mike@groundgametexas.org	2/15/2023 2:52:17 PM	SENT

Associated Case Party: MariaTeresaRamirez Morris

Name	BarNumber	Email	TimestampSubmitted	Status
Eric Opiela		eopiela@ericopiela.com	2/15/2023 2:52:17 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Judd E.Stone		judd.stone@oag.texas.gov	2/15/2023 2:52:17 PM	SENT
Maria Williamson		maria.williamson@oag.texas.gov	2/15/2023 2:52:17 PM	SENT

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#### Case Contacts

Ari Cuenin		ari.cuenin@oag.texas.gov	2/15/2023 2:52:17 PM	SENT
William FCole		William.Cole@oag.texas.gov	2/15/2023 2:52:17 PM	SENT

Associated Case Party: Texas Alliance for Life, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Eric Opiela		eopiela@ericopiela.com	2/15/2023 2:52:17 PM	SENT