

HARVEY KRONBERG'S QUORUM REPORT

TEXAS POLITICS REPORTING SINCE 1981

PO BOX 8 AUSTIN, TEXAS 78767

VOICE: 512.292.8191

EMAIL: KRONBERG@QUORUMREPORT.COM

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Kronberg: In bid to remove Democrats from office Abbott ignores his own previous opinion as AG on separation of powers

In 2007, Abbott as the AG wrote “this office will adhere to the Texas Constitution's separation of powers doctrine and longstanding precedent in declining to answer questions requiring an interpretation of Senate and House Rules or questions regarding legislative parliamentary decisions.”

It would be comical if it wasn't so sad.

The Governor of the great state of Texas, a former *Supreme Court Justice* and a former Attorney General is either willfully or ignorantly misrepresenting the law in extraordinarily consequential circumstances. The first was when he claimed that an Opinion from the *Office of the Attorney General* gave him the authority to remove elected officials, specifically Democratic State reps who are breaking quorum. The second was being reminded by AG **Ken Paxton** that the governor did not have standing to petition the Supreme Court seeking removal when only a district attorney, county attorney, or the AG could legally initiate the process. But this was never about the law. It's about optics and the *Fox News* audience.

Naturally, the governor's office disagrees with all this and the Supremes, mostly appointed by him, have asked the other side for a response.

But, to remind the governor, an Attorney General's opinion is purely advisory and has no force of law. These opinions are simply that: Opinions providing a basis for future litigation but with little relevance to justify a cause of action.

In fact, Gov. **Greg Abbott** has some experience of his own dealing with an attorney general intervening in legislative politics. It goes back to the days when *Texas House* chairmen wanted to remove a sitting speaker.

Back in 2007 when GOP Chairmen led the charge to remove then-Speaker **Tom Craddick** from the Chair, Representatives **Jim Keffer** and **Byron Cook** sought an opinion from Abbott as to whether the Speaker could only be removed by impeachment in the House and conviction by the Senate since that was the Constitutional method to remove a state officer.

Then-Attorney General Greg Abbott wrote [this lengthy opinion](#) confirming that impeachment was an option. But the concept was so laughable that it was never really taken seriously even by those who considered Craddick a “dictatorial tyrant” with the gavel.

Significantly, Abbott opined at that time “Finally, this office will adhere to the *Texas Constitution*’s separation of powers doctrine and longstanding precedent in declining to answer questions requiring an interpretation of Senate and House Rules or questions regarding legislative parliamentary decisions.”

Fast forward almost 20 years and of course here we are with Gov. Abbott seeking to intervene in internal Texas House business.

So, as a matter of law, Governor Abbott is consigned to twiddle his thumbs waiting for tomorrow’s deadline imposed by Speaker **Dustin Burrows** for absent Democrats to return. If they do not do so, apparently Paxton will seek to remove *Texas House Democratic Caucus* Chair **Gene Wu** for “abandonment of office.”

It is unclear whether Paxton will pursue normal channels which would require filing in state district court where evidence is presented by both sides and subsequently adjudicated. As a reminder, the Supreme Court is not generally a trier of fact.

It should also be noted, by the way, there is ample precedent for the Texas Supreme Court also declining to intervene in disputes between the Executive and Legislative branch.

But in the age of Trump, anything is possible.

After a diligent search, this observer could find no record of any elected official anywhere in the United States having been removed from office for breaking a quorum. Apparently, the last time it happened in North America was in New Jersey before it was a state.

As has often been discussed, the *Texas Constitution* has a higher threshold for the *Legislature* than what’s required for the *United States Congress*. It was the founders of Texas’ intent to empower the minority to be able to stop – or at least slow down – the majority in moments of some of the most extreme disagreements.

But there we go, letting legal arguments get in the way of a good political throwdown.

It is extraordinarily difficult to conceive how the political speech embodied in breaking the quorum could be considered “abandonment of office.” News releases are being issued, communications with the press are ongoing, staff is in place, constituents are getting their questions answered – all of which are part of the duties of the office.

It’ll be interesting to see what arguments General Paxton will proffer. But for sake of discussion, let’s presume he’s successful in removing Chairman Wu from office. If the other Democrats do not return, then presumably they would also be removed from office under the same standard.

Now we’re really getting into something as bizarre as *Toon Town* from the movie *Who Framed Roger Rabbit* because then there would be no quorum for months. Special elections would have to be called, campaigns conducted, and Democrats would again likely win those districts derailing **President Trump’s** redistricting wishes. Some Republicans argue the quorum threshold would be changed in the House, but again we’re in uncharted waters on that.

Nonetheless, most in the Capitol believe that at some point they will return, a map will be passed and go directly to the courts. The only thing likely to be achieved by the quorum break is delaying the game long enough to make it all but impossible to conduct an election unless the primary is delayed. Of course, the courts have moved a Texas primary previously, which many believe gave **Ted Cruz** the opportunity to build his successful US Senate campaign against then-Lieutenant Governor **David Dewhurst**.

There is yet one more interesting twist to this saga.

In a recent column I argued reaching for five districts would slice and dice the rest of the map so thin that it could put Republican incumbents in danger. I wrote that before we saw the map.

Now there is a map and thanks to the **Legislative Council**, it is possible to measure Trump's popularity in each of these Congressional districts based on the 2024 election.

It is not promising for Republicans. At least 15 Republican districts voted 60% or less for the president.

2024 was a halcyon year for Republicans. Democrats simply did not show up and if they did, some even voted for President Trump. It was the recent high-water mark for a Republican presidential candidate in Texas.

Basing redistricting maps on the Trump vote is truly dangerous. It is likely that this is a traditional midterm wherein the party in power loses seats. It's a reasonably safe assumption that Democrats and independents will turn out in greater force since this will be largely a referendum on Donald Trump and many believe the GOP magic of 2024 is not repeatable.

In fact, it is a safe assumption that without Trump on the ballot one could reasonably shave 3 to 5 points off the Republican numbers. 56% districts can be competitive, especially in an off year.

If one were to use **Beto O'Rourke's** 2018 numbers as a baseline for future Democratic performance, they would be quickly crushed. Just as 2018 was a Democratic high-water mark, 2024 was the same for Republicans. Of course, Democratic success is contingent upon lots of unknowns including quality candidates, sufficient funding, and higher turnout among angry Democrats along with disillusioned self-identified independent voters.

By Harvey Kronberg

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