No. 19-1065

# In the Supreme Court of Texas

CITY OF DOUBLE HORN, ET AL.,
*Petitioners*,

*v.*

STATE OF TEXAS,
*Respondent.*

On Petition for Review
from the Third Court of Appeals, Austin

## RESPONSE TO THE PETITION FOR REVIEW


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## Statement of the Case

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| *Nature of the Case*: | The State of Texas filed a petition for leave to file an information in the nature of quo warranto challenging the municipal incorporation of a homeowners' association. CR.3–6. |
| *Trial Court*: | 424th Judicial District Court, Burnet County<br>The Honorable Evan Stubbs |
| *Disposition in the Trial Court*: | The trial court denied the petition for leave to file, refused to file the information, and dismissed the case with prejudice. CR.180. |
| *Parties in the Court of Appeals*: | The State of Texas was the appellant. The City of Double Horn and its elected officials were the appellees. |
| *Disposition in the Court of Appeals*: | The court of appeals reversed the trial court's judgment and remanded the case, holding that during probable-ground review a trial court must decide whether the facts alleged in the State's information, taken as true, state a cause of action for which the quo warranto statute provides a remedy. *State v. City of Double Horn*, No. 03-19-00304-CV, 2019 WL 5582237, at *6 (Tex. App.—Austin Oct. 30, 2019, pet. filed) (Baker, J., joined by Goodwin and Kelly, JJ.). |

## Issues Presented

A rural subdivision of homes in an unincorporated area west of Austin voted to become a city to put a neighboring company out of business. The State petitioned the trial court for leave to file an information in the nature of quo warranto to challenge the municipal incorporation, but the court denied the petition. Instead of applying the well-settled standard for evaluating a probable ground to file a quo warranto lawsuit, the trial court erroneously skipped ahead to rule on the merits and sustained objections to the State's verified information and exhibits. The court of appeals correctly reversed and remanded, following established precedent. The appeal presents three issues:

1. Did the court of appeals correctly hold that the trial court erred by not applying the proper standard for determining whether a petition for leave to file an information in the nature of quo warranto has stated a cause of action, which is whether the facts alleged in the State's petition, taken as true, state a cause of action for which the quo warranto statute provides a remedy?
2. Did the court of appeals correctly hold that the trial court erred by requiring the State's information in the nature of quo warranto to be verified?
3. Given its conclusion that the trial court erred in applying the wrong legal standard to the State's information, did the court of appeals err in not reviewing the trial court's erroneous decision to consider the defendants' evidence outside of the pleadings during probable-ground review?

## To the Honorable Supreme Court of Texas:

The City of Double Horn asks the Court to review a decision that correctly determined the probable-ground standard a trial court must apply to a quo warranto lawsuit. Despite well-pleaded allegations of unlawful municipal incorporation, the trial court denied the State's petition for leave to file the information against Double Horn and dismissed the case. In doing so, the trial court failed to apply any guiding principles; failed to accept the State's allegations as true, as it was required to do; improperly sustained objections to the State's pleadings and evidence; and accepted evidence proffered by Double Horn against the State's allegations. These were clear errors under controlling law, which the court of appeals corrected.

In line with its sister courts, the court of appeals held that "the proper standard for determining whether a petition for leave to file an information in the nature of quo warranto has stated a probable ground is whether the facts alleged in the State's petition, taken as true, state a cause of action for which the quo warranto statute provides a remedy." *City of Double Horn*, 2019 WL 5582237, at *5. The court of appeals also correctly concluded that the State does not need to file a verified information. *Id.* at *4. And the court of appeals' decision that the trial court erred in applying the wrong legal standard did not require it to review the trial court's additional erroneous decisions during probable-ground review to sustain objections to the State's exhibits and verification and consider the defendants' evidence outside the pleadings. Thus, the court of appeals concluded that the trial court applied an erroneous standard to the State's petition for leave to file and wrongly adjudicated the

merits of the case, rather than deciding if the State showed a probable ground for quo warranto. *Id.* at *5.

Because the court of appeals' analysis and judgment are correct, and because this case does not have the broad implications that the petitioners suggest, the Court should deny the petition for review.

## Statement of Facts

The court of appeals correctly stated the nature of the case.

## I. Statutory Background

Sovereigns have used the writ of quo warranto to challenge the incorporation of subordinate cities for over 300 years.[1] Texas courts have recognized the writ of quo warranto since statehood, *Banton v. Wilson*, 4 Tex. 400, 406 (1849), and the Legislature codified these proceedings in 1879, *see Orix Capital Mkts., LLC v. Am. Realty Tr., Inc.*, 356 S.W.3d 748, 753 (Tex. App.—Dallas 2011, pet. denied) (citing *Norville v. Parnell*, 118 S.W.3d 503, 505 (Tex. App.—Dallas 2003, pet. denied)). It is well established that the State may file a quo warranto action to challenge municipal incorporation and the power of elected officials to hold office, just as the State tried to do in this case. *See, e.g.*, *Fuller Springs v. State ex rel. City of Lufkin*, 513 S.W.2d 17, 18 (Tex. 1974) (challenging the incorporation of a city based on the fact that another

[1] The writ of quo warranto arose in England. *See* Edward Jenks, D.C.L., *The Prerogative Writs in English Law*, 32 Yale L.J. 523, 527 (1923). In 1682, Charles II successfully challenged the legitimacy of the city of London's corporate status through the writ of quo warranto. *See* Gerald E. Frug, *The City as a Legal Concept*, 93 Harv. L. Rev. 1059, 1093 (1980).

city had already annexed the land in question); *State v. De Gress*, 53 Tex. 387, 401 (1880) (holding that a trial court erred in dismissing a quo warranto lawsuit challenging the right of the Austin's mayor to hold office).

Chapter 66 of the Civil Practice and Remedies Code currently governs these proceedings and provides several nonexclusive grounds for imposing the remedy of quo warranto. Tex. Civ. Prac. & Rem. Code §§ 66.001–.003. Two of the grounds for imposing the quo warranto remedy are relevant here. First, the State may file such an action when "a person usurps, intrudes into, or unlawfully holds or executes a franchise or an office," including a municipal office. *Id.* § 66.001(1). Second, the State may file a quo warranto lawsuit when "an association of persons acts as a corporation without being legally incorporated." *Id.* § 66.001(3).

Chapter 66 establishes several steps for quo warranto litigation. First, the Attorney General or the county or district attorney must independently determine "[i]f grounds for the remedy exist." *Id.* § 66.002(a). Second, if there are grounds for quo warranto, then the State's attorney "may petition the district court of the proper county or a district judge if the court is in vacation for leave to file an information in the nature of quo warranto." *Id.* Third, in the petition, the State's attorney "must state that the information is sought in the name of the State of Texas," *id.* § 66.002(b), and "may file the petition on his own motion or at the request of an individual relator," *id.* § 66.002(c). Finally, "[i]f there is probable ground for the proceeding, the judge shall grant leave to file the information, order the information to be filed, and order process to be issued." *Id.* § 66.002(d). Thus, during the prefiling review, the State must allege a "probable ground" for the lawsuit.

## II. Factual Background

A rural subdivision of about ninety-two homes west of Austin known as Double Horn Creek decided to incorporate as a city so that it could regulate Spicewood Crushed Stone LLC ("SCS"), an adjacent landowner. CR.9 ¶ 7, CR.34. SCS owns approximately 281 acres of undeveloped land next to Double Horn and plans to use the land for quarry operations after obtaining all required permits. CR.9 ¶¶ 7–8.

Upon learning of SCS's plans, some Double Horn residents devised municipal incorporation as a means of stopping SCS from operating a quarry on its land. CR.9–10, 21. The residents petitioned the Burnet County Judge to order an election for the municipal incorporation of Double Horn. CR.9 ¶ 10; CR.23–27. The incorporation measure passed by a 54% majority. CR.10 ¶ 12. The incorporated City of Double Horn includes within its boundaries the homesites and SCS's property. CR.10 ¶ 13. Residents elected a mayor and aldermen during a later election. CR.10 ¶ 14.

Double Horn lacks the characteristics associated with villages and towns in Texas, let alone full-fledged cities. CR.11 ¶ 17. There is one business near the subdivision, but Double Horn has no schools, shops, gas stations, convenience stores, churches, or public buildings. *Id.* Double Horn also lacks a plan to create and provide police, fire, or other emergency services to the homesites or SCS. CR.12 ¶ 19. There is no plan to deliver water or wastewater services to SCS and no plan to connect SCS's property to the subdivision by road. *Id.* No one expects that SCS's property will be developed as part of Double Horn. CR.13 ¶¶ 20–21. Double Horn does, however, plan to regulate SCS's property, CR.12 ¶ 19, and "make it difficult for [SCS] to do business," CR.21.

## III. Procedural History

The State filed a petition for leave to file an information in the nature of quo warranto, a verified information, and exhibits. CR.3. Even though it was not required to do so until after the trial court granted leave to file, Tex. Civ. Prac. & Rem. Code § 66.002(d), the State served these documents on Double Horn. CR.41-47. Double Horn filed a response in opposition with exhibits. CR.48-176. The trial court held a hearing on the State's petition, 2.RR.1, and issued an order denying the petition twenty days later, CR.180. The State appealed. CR.181.

The court of appeals reversed and remanded without oral argument. *City of Double Horn*, 2019 WL 5582237, at *1, 6. The court held that "[w]hile no caselaw specifically defines the phrase 'probable ground,'" *id.* at *4, "the proper standard for determining whether a petition for leave to file an information in the nature of quo warranto has stated a probable ground is whether the facts alleged in the State's petition, taken as true, state a cause of action for which the quo warranto statute provides a remedy," *id.* at *5.

## Summary of the Argument

The court of appeals correctly held that the trial court applied the wrong legal standard to the State's information in the nature of quo warranto. When reviewing a petition for leave to file, the courts of appeals agree that a trial court must accept as true the allegations in the State's information, and if those allegations state a cause of action, the trial court errs by refusing leave to file the petition.

The court of appeals also concluded correctly that the trial court erred by requiring the State's information to be verified. Neither the quo warranto statute, nor the civil rules, nor precedent, require verification.

Finally, the court of appeals did not err by not reviewing the trial court's erroneous decision to consider the defendants' evidence outside the pleadings during probable-ground review. As the court of appeals held, the trial court only needed to examine the State's allegations to determine whether there was a probable ground for the lawsuit.

## Standard of Review

Because the issues presented are questions of law, review is de novo. *State v. T.S.N.*, 547 S.W.3d 617, 620 (Tex. 2018).

## Argument

### I. The Court of Appeals Correctly Applied the "Probable Ground" Standard for Initiating a Quo Warranto Action.

When the State petitions a trial court for leave to file an information in the nature of quo warranto, Chapter 66 of the Civil Practice and Remedies Code provides that the State must show only a "probable ground" to file it. Tex. Civ. Prac. & Rem. Code § 66.002(d). The court of appeals correctly concluded that the State may satisfy this standard by alleging facts, taken as true, that state a cause of action for which Chapter 66 provides a remedy. The court of appeals applied this standard based on the plain meaning of the statutory text and decades of precedent. There is no need for the Court to review this case.

### A. The statute requires the State to allege only probable grounds to file the information.

Chapter 66 establishes a series of pre-filing benchmarks that the State must satisfy before proceeding with a quo warranto action. *See supra* p. 3. The State satisfied each of these statutory requirements. The Attorney General represents the State, CR.7, and he is one of three types of state officials who may file quo warranto lawsuits, Tex. Civ. Prac. & Rem. Code § 66.002(a)–(b). Here, the Attorney General determined that "grounds for the remedy [of quo warranto] exist[ed]." *Id.* § 66.002(a). Thus, he "petition[ed] the district court of the proper county . . . for leave to file an information in the nature of quo warranto." *Id.* § 66.002(a); CR.3–40. And he demonstrated a "probable ground" for the proceeding: Double Horn failed to satisfy the requirements for municipal incorporation and incorporated land not strictly for municipal purposes. CR.9–14. These allegations required the trial court to "grant leave to file the information, order the information to be filed [by the clerk of court], and order process to be issued." Tex. Civ. Prac. & Rem. Code § 66.002(d).

The pre-filing probable-ground process established in Chapter 66 ensures that the proper official files the lawsuit and that the pleading alleges facts that give rise to a quo warranto claim. *See, e.g.*, *Town of Fairview v. Lawler*, 252 S.W.3d 853, 857 (Tex. App.—Dallas 2008, no pet.) (holding that a resident could not bring a quo warranto action to challenge procedural irregularities of municipal annexation); *Gonzales v. Concerned Citizens of Webberville*, 173 S.W.3d 112, 119 (Tex. App.—Austin 2005, pet. denied) (holding that citizens could not challenge the incorporation of a city).

The State's pleadings satisfied the threshold requirements under Chapter 66. They expressly stated that Double Horn did not qualify for incorporation as a Type B general-law municipality because it is only a subdivision of homes, not an existing village or town, and it did not incorporate strictly for municipal purposes, but to regulate an adjoining landowner out of business. CR.10–13.

### B. The courts of appeals accept as true the allegations in the State's information when making the probable-ground determination.

During the pre-filing probable-ground review, Texas courts "accept as true the allegations contained in the State's petition." *Ramirez v. State*, 973 S.W.2d 388, 393 (Tex. App.—El Paso 1998, no pet.); *see also State v. Fischer*, 769 S.W.2d 619, 622 (Tex. App.—Corpus Christi–Edinburg 1989, writ dism'd w.o.j.) ("For the purpose of determining whether probable ground exists to support this proceeding, we will accept as true the allegations contained in the State's petition."); *State ex rel. Manchac v. City of Orange*, 274 S.W.2d 886, 888 (Tex. App.—Beaumont 1955, no writ) ("the allegations contained in the petition sought to be filed must be taken as true for the purpose of passing on this appeal"); *State ex rel. Brauer v. City of Del Rio*, 92 S.W.2d 287, 288 (Tex. App.—Eastland 1936, no writ) ("In testing such action, the allegations of the petition must, of course, be taken to be true."); *State ex rel. Thornhill v. Huntsaker*, 17 S.W.2d 63, 65 (Tex. . App.—Amarillo 1929, no writ) ("The allegations in the verified petition or information for quo warranto proceedings . . . must be taken as true . . . .").

Accepting the allegations as true, a court must then ask if "the petition sought to be filed state[s] a cause of action." *City of Orange*, 274 S.W.2d at 888; *accord*

*Huntsaker*, 17 S.W.2d at 65. To state a cause of action, the "procedural rules merely require that the pleadings provide fair notice of the claim and the relief sought such that the opposing party can prepare a defense." *In re Lipsky*, 460 S.W.3d 579, 590 (Tex. 2015) (citing Tex. R. Civ. P. 45 & 47). "Moreover, under notice pleading, a plaintiff is not required to set out in his pleadings the evidence upon which he relies to establish his asserted cause of action." *Id.* (citation and quotation marks omitted).

The trial court erred in this case by applying the wrong legal standard for determining whether there was a probable ground for the State to file the lawsuit. Instead of asking if the State had pleaded a claim, the court skipped ahead to the merits of the State's claims. The trial judge declared during the probable-ground hearing that "if you read the response [by Double Horn] and you look at it and keep the *merits* in, at least, the back of your mind, you've—if there's not necessarily a probable chance of you being successful, then really you're just using your position with the State to put all of these people in a real bad spot." 2.RR.13 (emphasis added). The trial court also said, "I'm going to find that there's not a probability of you *winning* this lawsuit or having the lawsuit." 2.RR.16 (emphasis added).

The court of appeals corrected the trial court's erroneous ruling and followed its "sister courts" in holding that the "trial court must accept as true the allegations contained in the State's petition in making its probable ground determination and 'need only find that the petition stated a cause of action to proceed.'" *City of Double Horn*, 2019 WL 5582237, at *4 (quoting *Ramirez*, 973 S.W.2d at 393; citing *Fischer*, 769 S.W.2d at 622). Thus, when the court of appeals reviewed the State's "factual allegations," it concluded that "the State sufficiently stated a claim for relief on its

claim of invalid incorporation" and that the "City officials are unlawfully acting as a municipal corporation." *Id.* at *6.

In short, the court of appeals resolved the legal issues correctly based on settled law. There is no need for review by this Court.

## II. The Court of Appeals Did Not Err in Holding that an Information in the Nature of Quo Warranto Need Not Be Verified.

The court of appeals correctly concluded that the trial court erred by requiring the State's information to be verified. *Id.* at *4. The State filed a verified information, CR.16, even though the text of the quo warranto statute, the rules of civil procedure, and precedent did not require it to do so. The trial court sustained Double Horn's objection to the verification and did not accept the State's allegations as true. CR.180. But the State did not need to file a verified information; thus, the trial court erred in denying leave to file based on the lack of verification.

### A. The text of the quo warranto statute does not require a verified information.

Chapter 66 of the Civil Practice and Remedies Code does not require the State to file a verified information. *See supra* p. 3. The only requirement is that the Attorney General or a county or district attorney "must state that the information is sought in the name of the State of Texas." Tex. Civ. Prac. & Rem. Code § 66.002(b). Nothing in Chapter 66 requires the State to file a verified information, nor does it command the trial court to deny the petition for leave for lack of a verification. In fact, all it tells the trial court is to decide whether "there is probable ground for the

proceeding." *Id.* Thus, the court of appeals correctly concluded that the trial court erred by requiring a verified information.

### B. The rules of civil procedure do not require a verified information.

The court of appeals' conclusion that the information does not need to be verified relies on the Texas Rules of Civil Procedure. *City of Double Horn*, 2019 WL 5582237, at *4. Rules 779, 780, 781, and 782, which specifically govern quo warranto actions, do not require the information to be verified. *See* Tex. R. Civ. P. 779 (describing the joinder of parties), 780 (instructing the clerk how to issue citation after the information is filed), 781 (explaining that a quo warranto action, once filed by the clerk, proceeds as normal civil cases do), 782 (stating "[t]he remedy and mode of procedure hereby prescribed shall be construed to be cumulative of any now existing"). Moreover, Rule 93, which discusses pleas that "shall be verified by affidavit," does not include an information in the nature of quo warranto. Tex. R. Civ. P. 93. None of the other civil rules require the State to verify the information.

By contrast, when a litigant seeks injunctive relief, he must file a verified petition. Tex. R. Civ. P. 682. Double Horn contends that an information in the nature of quo warranto should be verified just like a petition for injunctive relief, because both remedies are deemed extraordinary. Pet. 13–15. But the court of appeals correctly concluded that the text of the Rules of Civil Procedure does not require the State to verify the information. *City of Double Horn*, 2019 WL 5582237, at *4.

### C. 130 years of precedent do not require a verified information.

This Court's precedent and that of the courts of appeals is consistent with the text of Chapter 66 and the Rules of Civil Procedure. In *Hunnicutt v. State ex rel. Witt*, 12 S.W. 106, 108 (Tex. 1889), the Court distinguished between quo warranto actions filed on the relation of another person and those filed on behalf of the State itself. When, the Court explained, the State files a quo warranto action on the relation of someone else, it is a best practice for the State's attorney to file a verified information. *Id.* But the "state's officer might file his information without relation, and in that case it would seem that his official statement, unsworn, would be sufficient to authorize a judge to direct an information to be filed." *Id.* After all, "[t]he filing of the information establishes no facts on which the merit of the controversy rests; these must be established by evidence on final trial." *Id.*

Double Horn erroneously contends that this portion of *Hunnicutt* is dicta. Pet. 16. In the 130 years since that decision, the courts of appeals have never imposed a requirement that the State file a verified information to satisfy the probable-ground standard. In *State ex rel. Yelkin v. Hand*, the court of appeals, citing *Hunnicutt*, found "no merit" in the defendant's "contention that the court properly dismissed the suit because the information was not sworn to or verified by affidavit." 331 S.W.2d 789, 797 (Tex. App.—Houston 1959, writ ref'd n.r.e.); *see also Gifford v. State ex rel. Lilly*, 525 S.W.2d 250, 252 (Tex. App.—Waco 1975, writ dism'd by agr.) ("Article 6253 [the predecessor to Chapter 66] does not require that the petition or information filed herein be sworn to. No other statute and no rule requires it. We have not been cited a single authority, nor have we found one, which holds that such

verification is jurisdictional. We hold that it is not."); *Alamo Club v. State*, 147 S.W. 639, 640 (Tex. App.—San Antonio 1912, writ ref'd) (holding that the Attorney General did not need to file a verified information to contest a corporate charter on quo warranto grounds); *McLeod ISD v. Kildare ISD*, 157 S.W.2d 181, 184 (Tex. App.—Texarkana 1941, writ ref'd w.o.m.) (holding that a trial court did not err in finding probable grounds to proceed even though the defendant objected to an affidavit filed by the State on grounds that it did not support the quo warranto action).

Grasping to support its position, Double Horn mischaracterizes *Ramirez*, *Fischer*, and *City of Orange*. Pet. 9–11. None of those cases requires a verified information. Instead, all three conclude that regardless of whether the information is verified, the court must accept as true the allegations contained in the State's petition; if those allegations state a cause of action, then the trial court errs in refusing to file it. *Ramirez*, 973 S.W.2d at 393; *Fischer*, 769 S.W.2d at 622; *City of Orange*, 274 S.W.2d at 888.

Applying settled precedent, the court of appeals here did not err in holding that "no statute, rule, or caselaw explicitly requires the State to verify its petition or support it with evidence." *City of Double Horn*, 2019 WL 5582237, at *4.

## III. During Probable-Ground Review, a Trial Court Errs When it Considers Evidence Submitted by the Defendants.

When the State submits a petition for leave to file an information in the nature of quo warranto, the only issue before the court is whether the State's allegations, taken as true, state a probable ground to file the information. *Ramirez*, 973 S.W.2d at 393; *Fischer*, 769 S.W.2d at 622; *City of Orange*, 274 S.W.2d at 888; *City of Del Rio*,

92 S.W.2d at 288; *Huntsaker*, 17 S.W.2d at 65. If the State's information, taken as true, states a cause of action, then a trial court "err[s] in refusing permission to file it." *City of Orange*, 274 S.W.2d at 888. Thus, trial courts are to "look to the petition to determine its sufficiency." *Id.* The pre-filing probable-ground review is not an adversarial merits proceeding. The clerk does not even file the information or order the defendants to be served until after the court approves the pleading. Tex. Civ. Prac. & Rem. Code § 66.002(d). Often, defendants are not even present during the review.[2]

Double Horn asks this Court to upend settled principles and hold that a trial court may consider evidence submitted by a defendant during the pre-filing probable-ground stage to evaluate the merits of the State's cause of action. The trial court accepted that invitation. This Court should not.

Rather than evaluating whether the State established a probable ground to file a quo warranto action, the trial court skipped ahead to the merits of the State's claims. *See* 2.RR.13 ("[I]f you read the response [by Double Horn] and you look at it and keep the *merits* in, at least, the back of your mind, you've—if there's not necessarily a probable chance of you being successful, then really you're just using your position with the State to put all of these people in a real bad spot. . . ." (emphasis added)); 2.RR.16 ("I'm going to find that there's not a probability of you *winning* this lawsuit

[2] Because process does not issue until the trial court grants leave to file the information, many courts conduct probable-ground review ex parte. *See* Tex. Civ. Prac. & Rem. Code § 66.002.

or having the lawsuit." (emphasis added)). The court of appeals' opinion and judgment corrects the trial court's error.

Double Horn also wrongly asserts that the court of appeals' analysis deviates from this Court's precedent on subject-matter jurisdiction. Pet. 13. But that is not so. This Court's decision in *Texas Department of Parks and Wildlife v. Miranda* requires courts to liberally construe pleadings in the plaintiff's favor and deny a jurisdictional challenge if there is a fact issue. 133 S.W.3d 217, 226–27 (Tex. 2004). Nor is there any reason to grant review to replace the well-established quo warranto pleading standard with a standard based on the Federal Rules of Civil Procedure. *See* Pet. 13. Aside from the fact that federal procedural rules do not apply in state proceedings, Fed. R. Civ. P. 1, as in *Miranda*, when a federal court examines a complaint under the federal rules, it accepts the allegations as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Quo warranto precedent already requires courts to accept the allegations as true. *See supra* Part I.

Granting Double Horn's request that the Court approve the examination of the merits of a quo warranto case during probable-ground review would be an erroneous departure from settled precedent. It would allow a trial court to consider what amounts to a motion for summary judgment against the State without the benefit of any discovery. The Court should reject this request, just as courts of appeals have been doing for decades. *See, e.g.*, *City of Orange*, 274 S.W.2d at 888; *Huntsaker*, 17 S.W.2d at 65.

The pre-filing probable-ground review is designed to ensure that a case brought by the State is one for which quo warranto is applicable. Disputes about facts are re-

served to later stages of the litigation after the trial court finds grounds to file the petition. Here, although the court of appeals did not directly address whether the trial court erred in considering Double Horn's evidence, it correctly held that the trial court failed to accept the State's allegations as true and determine whether the State merely pleaded a cause of action. That underlying question resolves Double Horn's third issue and does not merit review by the Court.

## PRAYER

The Court should deny the petition for review.

Respectfully submitted.


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## Certificate of Service

On May 13, 2020, this document was served electronically on Wm. Andrew Messer, lead counsel for petitioners, via andy@txmunicipallaw.com.

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