

The impeachment allegations concern city council agenda items in which Council Members Barrera, Hernandez, Campos and Roy, among others, participated on February 20, 2024, and April 23, 2024, and in executive sessions related thereto. Plaintiff's Exhibit 3; Plaintiff's Exhibit 4, p. 6 (item 12); Plaintiff's Exhibit 5, pgs. 5 and 6 (item 7). The citizen petitioners contend that the mayor knowingly advanced or participated in a fraudulent presentation involving an allegedly altered FEMA image, improperly influenced Council action, and engaged in subsequent misconduct surrounding the ordinance and related records. Plaintiff's Exhibit 6 (Barrera Declaration); Plaintiff's Exhibit 1. Those allegations place at issue what individual Council members knew at the time; what they were told; what was discussed publicly and privately; what information they relied upon in voting; whether the allegedly altered FEMA material was material to the Council's ultimate decision-making process; and whether the mayor influenced or attempted to influence, their vote. Plaintiff's Exhibit 6, ¶¶ 38-45.

Specifically, that material information includes what was discussed with and amongst the council members publicly and privately before and after each vote, each council member's impressions about the agenda items and statements on those items on February 20 and April 23, 2024, and what information each council member relied on to cast their vote. *Id.* (Barrera Declaration). Council Members Roland Barrera, Everett Roy, Sylvia Campos and Gil Hernandez, participated in those votes, and are central fact witnesses with direct, first-hand knowledge of the very events, deliberations, presentations, public comments, legal advice, and Council actions that Petitioners contend justify removal. *Id.* (Barrera Declaration).

Through a verified motion, Mayor Guajardo moved the city council members who participated in the impeachment subject matter to recuse or disqualify themselves from presiding over the impeachment proceeding as judges and jurors. Plaintiff's Exhibit 7 (Dkt. No. 53-1). On June 2, 2026, two council members refused to recuse or disqualify themselves from presiding over the impeachment process and the verified recusal motion was denied. Plaintiff's Exhibit 8 (Dkt. No. 58). Two other council members recused themselves from the proceeding. *Id.* After denying the verified recusal motion, the Corpus Christi City Council denied the mayor's motion to strike the impeachment proceeding and set a trial date of July 22 and 23. *Id.*

II. LEGAL STANDARD

Procedural due process under the Fourteenth Amendment of the United States Constitution is implicated when a person is deprived of life, liberty or property without due process of law. U.S. Const. amend. XIV, § 1, cl. 3. Courts conduct a two-step analysis to determine if a person's procedural due process rights have been violated: 1) whether there is a property or liberty interest that is interfered with by the State and 2) whether the procedures provided for that deprivation were constitutionally sufficient. *The Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 572 (1972); *Meza v. Livingston*, 607 F.3d 392, 399 (5th Cir. 2010).

Property and liberty interests protected by the Due Process Clause go "well beyond" actual ownership of real property or the deprivation of a liberty in a criminal process. *Id.* That property and liberty interest encompasses a person's public employment and elected office. *LeBeouf v. Manning*, 575 F. App'x 374, 376 (5th Cir. 2014). "An elected city official

who is entitled to hold an office under state law has a property interest in his office which can be taken from him only by procedures meeting the requirements of due process.” *Crowe v. Lucas*, 595 F.2d 985, 993 (5th Cir. 1979); *Schwenke v. State*, 960 S.W.2d 227, 233 (Tex. App. – Corpus Christi 1997, pet. denied) (“[A]n officer's interest in his elected position, though not 'property' in the conventional sense, is a recognizable interest for purposes of procedural due process analysis”) (citing *Tarrant County v. Ashmore*, 635 S.W.2d 417 (Tex. 1982)). Due process protections apply to home rule cities. *TitleMax of Texas, Inc v. City of Dallas*, 142 F.4th 322, 331 (5th Cir. 2025).

Under the second step of the due process analysis, a court determines if the deprivation procedures are constitutionally sufficient by weighing three factors: “First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Bowlby v. City of Aberdeen, Miss.*, 681 F.3d 215, 221 (5th Cir. 2012) (reversing dismissal of due process claim). This analysis allows for flexible protections based on the demands of the particular situation. *Id.* The root requirement is an opportunity for a fair hearing before deprivation of a significant interest. *Id.* Whatever process is afforded, the means of deprivation must be “fundamentally fair.” *Turner v. Rogers*, 564 U.S. 431, 444 (2011) *Mathews*, 424 U.S. at 343; *Wolff v. McDonnell*, 418 U.S. 539, 565 (1974). “‘Procedural Due Process’ ensures that government action depriving a person of life, liberty, or property is implemented in a fair manner.”

Caliste v. Cantrell, 329 F. Supp. 3d 296, 310 (E.D. La. 2018), *aff'd*, 937 F.3d 525 (5th Cir. 2019). In the review of process, courts consider the structure of the deprivation process such as whether a person is allowed counsel, an equal opportunity to review and contest findings of fact, and whether written reasons for decisions are issued. *See Caliste I*, 329 F. Supp. 3d at 310.

An impartial judge and jury is an essential element to due process. “Trial before ‘an unbiased judge’ is essential to due process.” *Pub. Citizen, Inc. v. Bomer*, 274 F.3d 212, 217 (5th Cir. 2001). “[I]t certainly violates the Fourteenth Amendment ... to subject [a person's] liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.” *Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 821–22 (1986); *Commonwealth Coatings Corp. v. Cont'l Cas. Co.*, 393 U.S. 145, 150 (1968); *In re Murchison*, 349 U.S. 133, 139 (1955); *Tumey v. State of Ohio*, 273 U.S. 510, 535 (1927). The clause may even bar judges with no actual bias from presiding over a case in order to “satisfy the appearance of justice.” *Lavoie*, 475 U.S. at 825. In making out a due process judicial disqualification claim “a party must show a judge has a “direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case.” *Bomer*, 274 F.3d at 217. When a judge stands to benefit from their adjudication it is a “dual role” that creates an unconstitutional defect and the process is void. *Caliste II*, 937 F.3d at 531.

Similarly, the due process clause also protects individuals from a biased jury. *United States v. Thomas*, 627 F.3d 146, 161 (5th Cir. 2010). The right to an impartial jury is so important that it is mentioned twice in the Constitution: first in Article 3, Section 2, Clause

3, of the Constitution and then in the Sixth Amendment. U.S. Const. art. III, § 2, cl. 3; amend. VI. “Due process means a jury capable and willing to decide the case solely on the evidence before it, and a trial judge ever watchful to prevent prejudicial occurrences and to determine the effect of such occurrences when they happen.” *Smith v. Phillips*, 455 U.S. 209, 217 (1982). To demonstrate impermissible juror bias a petitioner must show “the actual existence of such an opinion in the mind of the juror as will raise the presumption of partiality.” *Murphy v. Fla.*, 421 U.S. 794, 800 (1975). The Clause’s protections require the judge to seat an impartial jury at trial and to proactively inquire into a juror’s bias if the court becomes aware of a bias issue later. *United States v. Gemar*, 65 F.4th 777, 780 (5th Cir. 2023); *Oswald v. Bertrand*, 374 F.3d 475, 477–78 (7th Cir. 2004). “The responsibility of the court, however, is to secure for all of the parties the fair, unbiased and impartial jury which the administration of justice requires and to which the parties are entitled.” *Hicks v. Mickelson*, 835 F.2d 721, 725 (8th Cir. 1987). When witnesses become involved with the prosecutors and jurors it undermines that right to a fair trial. *Hawkins v. Estelle*, 364 F. Supp. 394, 398 (S.D. Tex. 1973). A person with an interest in a case is not only biased and barred from serving as a juror; Federal Rule of Evidence Rule 606(a) also prohibits jurors from testifying as witnesses. *See Parker v. Gladden*, 385 U.S. 363, 365 (1966).

Texas law similarly protects the right to a fair trial. *Cortez ex rel. Est. of Puentes v. HCCI-San Antonio, Inc.*, 159 S.W.3d 87, 94 (Tex. 2005). If a juror has an interest in the matter, it can be inferred that the juror will not act with impartiality and is biased. *Id.* Under Texas Government Code § 62.105, a person is disqualified to serve as a juror in a particular case if he: “(1) is a witness in the case; (2) is interested, directly or indirectly, in the subject

matter of the case...(4) has a bias or prejudice in favor or against a party in the case.” “Persons with knowledge of material facts may be disqualified as a ‘witness in the case’ ‘because they are likely to decide a case based on what they personally saw or heard rather than on what they see and hear in court.’” *Siller v. LPP Mortg., Ltd.*, 264 S.W.3d 324, 330 (Tex. App.—San Antonio 2008, no pet.). =And under Texas Rule of Civil Procedure 18b a person serving as a judge “must” recuse themselves from any proceeding in which the “judge has personal knowledge of disputed evidentiary facts concerning the proceeding” and they “must” disqualify themselves in any proceeding in which “the judge knows that, individually or as a fiduciary, the judge has an interest in the subject matter in controversy.” TEX. R. CIV. P. 18(a)(2) and (b)(3). This rule requiring disqualification or recusal applies to “any trial court other than a statutory probate court or justice court.” TEX. R. CIV. P. 18a(a).

Actions taken by a judge who has personal knowledge of disputed facts are void. *State v. Haworth*, 533 S.W.3d 484, 487 (Tex. App. – Corpus Christi-Edinburg 2017, no pet.); *Kniatt v. State*, 239 S.W.3d 910, 921 (Tex. App. – Waco 2007, no pet.). Texas Rule of Evidence 606 prohibits jurors from testifying as witnesses before the other jurors of the trial (*see* TEX. R. EVID. 606), and Texas Rule of Evidence 605 commands that “[t]he judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve this point.” TEX. R. EVID. 605.

In *Bradley*, the Texas Supreme Court found that two alderman were disqualified under Rule 605 from sitting “in judgment” over a removal trial because they were also witnesses. *Bradley v. State ex rel. White*, 990 S.W.2d 245, 249-50 (Tex. 1999).

Under Federal Rule of Civil Procedure 56, “the court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56 “A fact is material if it ‘might affect the outcome of the suit’ [and a] factual dispute is genuine ‘if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.’” *Harville v. City of Houston, Mississippi*, 945 F.3d 870, 874 (5th Cir. 2019).

III. ARGUMENT

The impeachment allegations concern the Mayor's conduct in connection with City Council proceedings and executive sessions, including the presentation and use of an allegedly altered FEMA image, the Council's consideration of related agenda items, and subsequent events surrounding the ordinance and related records. As a result, the proceeding necessarily places at issue the facts and circumstances surrounding those Council proceedings, including what information individual Council members received, what they understood at the time, what discussions occurred before and after the votes, what legal advice was provided, and whether the allegedly altered FEMA material affected the Council's deliberations or decision-making.

Council Members Barrera, Roy, Campos, and Hernandez personally participated in the underlying events that form the basis of the impeachment allegations. They possess direct, first-hand knowledge concerning the presentations made to the Council – publicly and in executive session – communications among Council members, public comments, legal advice received, the information considered by the Council, and the actions ultimately taken by the Council. Exhibit 6, ¶¶ 38-45. Their knowledge extends beyond matters of

procedure and directly concerns disputed factual issues that Petitioners contend justify removal from office.

In addition, these same Council members have personal knowledge regarding events occurring both before and after the challenged Council actions, including matters bearing on the materiality of the allegedly altered FEMA image, the Mayor's alleged influence on Council decision-making, and the factual basis for the allegations ultimately advanced in support of impeachment. Their testimony is therefore central to the factual issues that must be resolved in this proceeding. They are material witnesses who could be called to testify. *U.S. v. Chandler*, 604 F.2d 972, 974-75 (5th Cir. 1979) (discussing the definition of a witness).

Each such witness is a source of testimony regarding relevant and contested facts. For example, and only by way of example, and relevant to Article of Impeachment One, each can testify to evidence – or the lack thereof – regarding whether the Mayor promoted a false narrative to procure approval of a \$2,000,000 incentive for her “friends.” Relevant to each Article of Impeachment, each is a fact witness to whether the evidence suggests or does not suggest that the Mayor herself was aware of the alteration of the FEMA website screenshot. Also relevant to each Article of Impeachment, each of the four council members is a fact witness to whether the evidence suggests or does not suggest that the Mayor was aware of whether the alteration of the FEMA website screenshot was a “fraud” or a “crime.” Each is a fact witness to whether any “Aye” vote at either the February or April 2024 council meeting was the result of the Mayor’s words or actions. Relevant to Article of Impeachment Three, each has relevant testimony regarding whether the Mayor’s

alleged conduct is a breach of CCREDC or Type B Board confidentiality conventions or agreements. Plaintiff could go on; the scope of relevant testimony that each of the four council members can provide is wide considering the scope of the various acts and conduct referenced in the Articles of Impeachment. The arbiter must determine whether Mayor Guajardo knowingly engaged in misleading the council members without examining what the Council Members Barrera, Roy, Campos and Hernandez members themselves understood, believed, discussed, relied upon, and observed during the legislative process. Accordingly, the council members are not merely policymakers participating in a legislative process but are firsthand factual participants in the very events Petitioners seek to litigate. *See id.*

Participating in the events of the proceeding is an elementary application of the rule against bias and interest. *See Lavoie*, 475 U.S. at 821–22; *Gemar*, 65 F.4th at 780. The people who were participants and witnesses to the subject matter of the impeachment petition are attempting to preside over that proceeding as judges and jurors. They may not do so under Texas and Federal statutory law, and they may not do so under the due process protections of the United States Constitution. FED. R. EVID. 606(a); TEX. R. EVID. 605; TEX. GOV'T CODE § 62.105; TEX. R. CIV. P. 18b.

The council members' votes and the facts around the votes are the material facts necessary for the adjudication of the removal petition and the votes themselves create an interest in the agenda item, since each council member will be individually or personally vindicated in the outcome of the impeachment vote about those agenda items they voted on. Therefore, each council member who considered the agenda items on February 20,

2024, and April 23, 2024, has “personal knowledge of disputed evidentiary facts concerning the proceeding” and “direct, personal, substantial” interest in the case they are presiding over, prohibiting them from serving as judges or jurors. *See Murphy*, 421 U.S. at 800; *Lavoie*, 475 U.S. at 825; *Bomer*, 274 F.3d at 217; *Gemar*, 65 F.4th at 780; TEX. R. CIV. P. 18b; Texas Government Code § 62.105. Serving as witnesses and judges in a removal proceeding contravenes Rule of Evidence 605 in the same way the Texas Supreme Court ruled was unlawful in *Bradley. Bradley*, 990 S.W.2d at 248.

Further, the Due Process Clause of the United States Constitution protects individuals from being subjected to such a deeply compromised deprivation process. *See Mathews*, 424 U.S. at 343; *Caliste I*, 329 F. Supp. 3d at 310. An unfair trial with biased judges and jurors is not a constitutionally sufficient deprivation proceeding. *See id.*; *Lavoie*, 475 U.S. at 821–22; *Gemar*, 65 F.4th at 780; *Crowe*, 595 F.2d at 993; *Bowlby*, 681 F.3d at 221; *Schwenke*, 960 S.W.2d 227. While home-rule cities are granted degrees of autonomy in Texas, they are not above the United States Constitution. *TitleMax of Texas*, 142 F.4th at 331. Convening a kangaroo tribunal composed of biased witnesses serving as judges and jurors does not fulfill the basic promise of a “fundamentally fair” proceeding, nor it satisfy the appearance or reality of justice that our due process clause guarantees. *See Turner*, 564 U.S. at 444; *Murphy*, 421 U.S. at 800; *Lavoie*, 475 U.S. at 825; *Bomer*, 274 F.3d at 217; *Gemar*, 65 F.4th at 780. That dual role is a constitutional defect which makes the entire

removal proceeding infirm. *Caliste II*, 937 F.3d at 531. No exception applies to this fundamental rule of fairness.²

It is impossible for a fair trial to occur with biased witnesses serving as judges and jurors and this Court must intervene if it wishes to preserve the promise of fairness guaranteed by the due process clause. *See Murphy*, 421 U.S. at 800; *Turner*, 564 U.S. at 444; *Thomas*, 627 F.3d at 161; *Bomer*, 274 F.3d at 217; *Gemar*, 65 F.4th at 780 *Hawkins*, 364 F. Supp. at 398.

Here, there is no genuine dispute of material fact that the judges and jurors presiding over the removal proceeding are witnesses with personal knowledge of the subject matter of the petition and personal interests in the outcome of the impeachment. See Exhibit 6. Nor is there any genuine question that such a biased person may preside over a trial under our Constitution's due process protections. Accordingly, summary judgment should be granted and an injunction entered in favor of the Plaintiff. *See Harville*, 945 F.3d at 874.

IV. CONCLUSION

For the aforementioned reasons, this Court should grant Plaintiff's Summary Judgment Motion and grant final injunctive relief to Plaintiff prohibiting the Defendants from conducting removal proceedings with biased witnesses as judges and jurors.

² The Rule of Necessity does not apply because it is an equitable doctrine that was created to allow for the administration of justice when otherwise no forum would be available to litigate an issue due to a conflict of interest. *United States v. Will*, 449 U.S. 200, 213 (1980). The Rule does not apply to witnesses. *See id.* The undersigned has found no case – in any state or federal court in the United States – that applied the Rule of Necessity to allow a material witness to serve as a judge or juror.

Respectfully submitted,

/s/ John Flood

John Flood
819 N. Upper Broadway
Corpus Christi, Texas 78401
(361) 654-8877
Fax (361) 654-8879
john@floodtriallawyers.com
Irma@floodtriallawyers.com

Stephen Dockery
Texas Bar No. 24120265
Flood & Flood
914 Preston, Suite 800
Houston, TX 77002
(713) 223-8877
Fax (713) 223-8879
stephen@floodandflood.com

Ben Stephens
State Bar No. 24098472
Ben.Stephens@huschblackwell.com
Kate David
State Bar No. 24045749
Kate.David@huschblackwell.com
Sandy Hellums-Gomez
State Bar No. 24036750
Sandy.Gomez@huschblackwell.com
HUSCH BLACKWELL LLP
600 Travis, Suite 2350
Houston, Texas 77002
T: 713.647.6800
F: 713.647.6884
ATTORNEYS FOR PLAINTIFF
PAULETTE M. GUAJARDO

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing has been served on counsel for the Defendants through the CM/ECF system of the Court.

/s/ John Flood

John Flood

CERTIFICATE OF CONFERENCE

I certify that on June 10, 2026, I conferred with counsel for the City of Corpus Christi and counsel for the individual council member defendants and they each confirmed their clients' opposition to this motion and the relief it requests.

/s/ John Flood

John Flood