

Lawyers File Motion To Quash Perry's Indictment

By Terri
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Gov. Rick Perry leaves the Blackwell-Thurman Justice Center in Austin after his booking on Aug. 19, 2014.

*Clarification appended

Gov. [Rick Perry](#)'s lawyers have filed a second challenge to the governor's indictment on Monday, asking a judge to dismiss the charges against him on the grounds that the charges are unconstitutional.

"Continued prosecution of Governor Perry on the current indictment is unprecedented," Perry attorneys Tony Buzbee and Tom Phillips state in their motion to quash the indictment. "This attempt to criminalize the political process should not be tolerated by this Court or any Texas court."



Perry was indicted last month on charges he coerced a public servant and abused his official capacity of governor when he threatened to veto \$7.5 million in state funds to the Travis County district attorney's office if District Attorney Rosemary Lehmborg refused to step down after her April 2013 drunken driving arrest.

Although the new filing bears some of the same arguments offered in a writ of habeas corpus filed a week ago by Perry's defense team, lawyers observing the case say there's a reason to file both.

"They say the same thing but they're very different things," explained Philip H. Hilder, a Houston defense attorney. "The writ is saying the judge doesn't have the authority to move forward on the indictment, while the motion to dismiss is acknowledging that the court has the authority to act on indictment but it ought to be dismissed as a matter of law."

In effect, the lawyers are asking the judge to toss the indictments no matter how he rules on the court's authority to proceed.

Paul Coggins, a Dallas attorney said filing both challenges is just good lawyering.

"If you can't get through the front door, you go through the back door," Coggins said. "I think they're covering their bases."

There is no deadline yet as to when the special prosecutor in this case, Mike McCrum, will file his responses to the defense team's challenges.

However, while both challenges — the motion to quash and the habeas writ — may make the same arguments, but the order in which sitting Judge Bert Richardson considers could make a big difference in the pace of the proceedings.

"We hope the court will consider them both at the same time," Buzbee said. "The grounds are essentially the same but this filing gives the court the ability to dismiss completely both counts of the indictment if he feels some issues are better addressed via a dismissal motion rather than a writ."

The judge's decision on the motion to quash cannot be appealed by the defense, Hilder said. His decision on the writ can be and an appeal could freeze action on the case for months.

"The danger of filing the writ here is the losing party will appeal, and that is going to slow matters to a grinding halt for a while," Hilder said, adding that all action in the trial court would stop until the appeals court makes its ruling on the writ.

The next court date in the case, Oct. 13, is expected to be more of a sort of check in between McCrum and the Perry lawyers with Visiting Judge Bert Richardson. Perry is not expected to appear.

Editor's note: An earlier version of this story indicated that a motion to quash could not be appealed. It cannot be appealed by the defense.