

**NO. 20-0394**

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In the Supreme Court of Texas

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*IN RE STATE OF TEXAS*  
*Relator*

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On Relator's Petition for Writ of Mandamus  
To the Harris County Clerk, the Travis County Clerk,  
the Dallas County Elections Administrator,  
the Cameron County Elections Administrator, and  
The El Paso County Elections Administrator

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**RESPONDENT REMI GARZA'S RESPONSE TO THE STATE'S  
PETITION FOR WRIT OF MANDAMUS**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES .....	vi
STATEMENT OF THE CASE: .....	1
ORAL ARGUMENT: .....	2
STATEMENT OF JURISDICTION:.....	2
SUMMARY OF ARGUMENTS:.....	2
STATEMENT OF FACTS:.....	3
ARGUMENT: .....	7
REMEDY SOUGHT BY THE ATTORNEY GENERAL DOES NOT SEEK TO COMPEL A MINISTERIAL DUTY BUT SEEKS TO MANDATE AN ACT THAT VIOLATES TEXAS AND FEDERAL LAW. ....	7
THERE EXISTS A GENUINE ISSUE OF FACT WHICH PRECLUDES THE ISSUANCE OF A WRIT OF MANDAMUS.....	13
THE HARM ALLEGED BY THE RELATOR IS EXAGGERATED AND NONEXISTENT. ....	16
THE PREDICATE CAUSE FOR THE RELATOR’S PETITION FOR WRIT OF MANDAMUS HAS BEEN STAYED BY THIS HONORABLE COURT AND AS SUCH THE IMMEDIATE MATTER BEFORE THIS HONORABLE COURT IS MOOT. ....	20
PRAYER .....	21
CERTIFICATE OF COMPLIANCE.....	22
CERTIFICATE OF SERVICE.....	23

## TABLE OF AUTHORITIES

### Cases

<i>Bray v. Peden</i> , 213 S.W.2d 469, 471-72 (Tex. Civ. App.—Fort Worth 1948, no writ) .....	9
<i>Donald v. Carr</i> , 407 S.W.2d 288 (Tex. Civ. App.—Dallas 1966, no writ) .....	17
<i>Ellen S. v. Florida Bd. of Bar Examiners</i> , 859 F. Supp. 1489, 1493–94 (S.D. Fla. 1994) .....	12
<i>Ferris v. Carlson</i> , 158 Tex. 546, 549, 314 S.W.2d 577, 579 (1958) .....	9
<i>Grant v. Ammerman</i> , 437 S.W.2d 547, 550 (Tex. 1969) .....	17
<i>Holcomb v. Robinson</i> . 118 Tex. 395, 15 S.W.2d (Tex. Comm'n App. 1929, adopted) .....	15, 16
<i>In re Francis</i> , 186 S.W.3d 534, 538 (Tex. 2006).....	18
<i>McClelland v. Sharp</i> , 430 S.W.2d 518, 522 (Tex. Civ. App.—Houston [14th Dist.] 1968, no writ) .....	9
<i>Med. Soc'y of New Jersey v. Jacobs</i> , CIV. A. 93-3670(WGB), 1993 WL 413016, at *7 (D.N.J. Oct. 5, 1993) .....	12
<i>Nat'l Fed'n of the Blind v. Lamone</i> , 813 F.3d 494, 507 (4th Cir. 2016).....	10, 11
<i>Nat'l Fed'n of the Blind</i> , 813 F.3d at 507 citing .....	12

<i>Rogers v. Lynn</i> , 121 Tex. 467, 49 S.W.2d 709 (Tex. Comm’n App. 1932, adopted), rehearing denied, 121 Tex. 467, 51 S.W.2d 1113.....	15
<i>State ex rel. Sharp v. Martin</i> , 186 S.W.2d 111, 114 (Tex. Civ. App.— Amarillo 1945, writ ref’d w.o.m.).....	9
<i>Tennessee v. Lane</i> , 541 U.S. 509, 516, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) .....	12
<i>Univ. Interscholastic League v. Sims</i> , 133 Tex. 605, 606, 131 S.W.2d 94 (Comm'n App. 1939, adopted) .....	22
<i>Weatherly v. Fulgham</i> , 153 Tex. 481, 483-84, 271 S.W.2d 938, 940 (1954)	9
<i>West v. Solito</i> , 563 S.W.2d 240, 245 (Tex. 1978).....	15
<b>Statutes</b>	
42 U.S.C. § 12101(a)(7)). .....	12
42 USC §§12101 et seq.....	11
52 USC §20104(b).....	11, 12
Tex. Civ. Prac. & Rem. Code Ann. § 37.002(b)(West 2020).....	16
Tex. Elec. Code § 84.0041(West 2020) .....	10
Tex. Elec. Code § 84.011(West 2020) .....	10
Tex. Elec. Code § 86.001(West 2020) .....	10
Tex. Elec. Code §§ 102.001-.002(West 2020) .....	9, 12
Tex. Elec. Code §§ 82.001-.005(West 2020).....	8

Tex. Elec. Code §§ 82.001-.007(West 2020) ..... 9

Tex. Elec. Code §273.062 (West 2020) ..... 2

Tex. Elec. Code §86.001 (West 2020) ..... 4

Tex. Elec. Code 84.001-.002(West 2020) ..... 9

Tex. Gov’t Code 31.003 (West 2020)..... 5

**Regulations**

28 C.F.R. § 35.130(a) ..... 11

28 C.F.R. § 35.130(b)(8)..... 12

28 C.F.R. §35.104 ..... 11

**Rules**

Tex. R. Civ. P. 680 ..... 16

Tex. R. Civ. P. 692 ..... 17

TX. R. Cameron Cty Rule 1.2..... 16

TX. R. Cameron Cty Rule 1.3..... 16

**Constitutional Provisions**

Tex. Const. art. V, § 3..... 2

**Other Authorities**

<https://gov.texas.gov/first-lady/tours>..... 20

[https://childsupport.oag.state.tx.us/wps/portal/CSIMobile/MobileCSIHome/!ut/p/a1/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOJ9\\_H1MDN1NjHwsPA1NDRwDfILNnD18DQ0MDfULsh0VAXHbQ8M!/](https://childsupport.oag.state.tx.us/wps/portal/CSIMobile/MobileCSIHome/!ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOJ9_H1MDN1NjHwsPA1NDRwDfILNnD18DQ0MDfULsh0VAXHbQ8M!/) ..... 20



<https://www.cameroncounty.us/elections/index.php/register-to-vote-vote-by-mail/> ..... 6, 7

<https://www.sos.state.tx.us/elections/historical/cameron.shtml>. .... 19

<https://www.sos.state.tx.us/index.html>..... 19

SOS COVID-19 Advisory at 2 ..... 5

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**RESPONDENT REMI GARZA'S RESPONSE TO THE STATE'S  
PETITION FOR WRIT OF MANDAMUS**

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

REMI GARZA, Respondent, files this Response to Relator's Petition for Writ of Mandamus.

**STATEMENT OF THE CASE:**

The State of Texas, Relator, seeks a mandamus to compel the early voting clerks of a number of counties, including "Cameron [County], to perform [their] statutory [duty] to review voters' applications to vote by mail and issue mail-in ballots in accordance with Texas Election Code." Relator's Petition for Writ of Mandamus (RPWM) Pg. viii.

Relator alleges “Respondents have a duty to reject applications for mail-in ballots that claim disability under Texas Elections Code §82.002(a) based solely on the generalized risk of contracting a virus.” RPWM, pg. 1, ¶1.

**ORAL ARGUMENT:**

Oral arguments are scheduled for May 20, 2020, at 1:30pm. If permitted, Respondent Garza will participate.

**STATEMENT OF JURISDICTION:**

The Texas Supreme Court has the authority to grant an application for writ of mandamus under the Texas Constitution and Texas Elections Code. Tex. Const. art. V, § 3 and Tex. Elec. Code §273.062 (West 2020)(stating “[t]he Supreme Court ... may issue a writ of mandamus to compel the performance of any duty imposed by law in connection with the holding of an election or a political party convention, regardless of whether the person responsible for performing the duty is a public officer.”).

**SUMMARY OF ARGUMENTS:**

The Relator’s Petition for Writ of Mandamus is without merit.

Hence this Honorable Court should deny the requested relief sought by Relator. Respondent Remi Garza has no ministerial duty to go beyond the face of an application for a mail-in ballot to evaluate the veracity of a claim of disability. Moreover, there exists a question of fact that precludes the issuance of the Writ of Mandamus sought by the Relator. Furthermore, Relator severely exaggerates the harm it seeks to remedy. Lastly, the need for the Writ of Mandamus sought by the Relator is moot. For these reasons, the Writ sought by the Relator is improper and the relief sought should be denied.

**STATEMENT OF FACTS:**

On or about April 17, 2020, Travis County State District Court Judge Tim Sulak issued a preliminary injunction finding that an absence of COVID-19 immunity is a “physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of...injuring the voter’s health” within the meaning of Texas Elections Code §82.002. Judge Sulak enjoined the Relator and the Travis County Clerk from issuing guidance or otherwise taking actions that would prevent counties from permitting individuals to secure a mail-in ballot based on the

disability category of eligibility as a result of the COVID-19 pandemic. Relator filed a notice of appeal. The appeal was assigned to the 14th Court of Appeals in Houston, Texas.

On May 14, 2020, in Cause No. 14-20-00358-CV, the 14th Court of Appeals issued temporary orders pursuant to Texas Rule of Appellate Procedure 29.3 adopting the temporary injunction of the Travis County Trial Court. Subsequently Relator filed a Writ of Mandamus with this Honorable Court to stay the temporary injunction. The following day, the Court granted Relator's request for relief and issued an order staying the effect of the 14th Court of Appeals temporary order.

The Elections Code directs Respondent and his staff to "review each application for a ballot to be voted by mail" and "[i]f the applicant is entitled to vote an early voting ballot by mail, the clerk shall provide an official ballot to the applicant as provided by this chapter." Tex. Elec. Code §86.001 (West 2020). However, there exists no guidance in the Texas Administrative Code directing the Respondent and his staff to determine the veracity of a claim for a mail-in ballot. The Secretary of State is tasked with providing guidance on the meaning of Texas

Election Law. *See* Tex. Gov't Code 31.003 (West 2020). On April 2, 2020, the Texas Secretary of State issued Advisory 2020-14-COVID-19 (Coronavirus) Voting and Election Procedures which covered various election procedures in light of the pandemic, including the availability of ballots by mail for persons with disabilities. Said Advisory directs:

One of the grounds for voting by mail is disability. The Election Code defines “disability” to include a sickness or physical condition that prevents the voter from appearing at the polling place on election day without a likelihood of needing personal assistance or injuring the voter’s health.” (Sec. 82.002.) Voters who meet this definition and wish to vote a ballot by mail must submit an application for ballot by mail.”

SOS COVID-19 Advisory at 2.

In response to the Travis County State District Court injunction, and in order to provide accurate and factual up-to-date information to Cameron County voters, Respondent, as an agent for the state and the Cameron County Elections Administrator, issued the following statement on the Cameron County Elections Department website:

Texas District Judge Tim Sulak issued a temporary injunction on April 17, 2020 allowing registered voters to use the coronavirus as a reason to request a mail-in ballot. In light of this temporary judgement and its underlying reasoning, the Cameron County Elections Department will

not reject any voter's request for a mail-in ballot based on the eligibility category of disability. Our office has no legal authority to administratively require voters to substantiate their disability at the time the application is submitted.<sup>1</sup>

This statement was modified after the issuance of the Temporary Order of the 14th Court of Appeals and now includes the statement "Update: On May 14, 2020, the 14<sup>th</sup> Court of Appeals ordered that the trial court's temporary injunction remains in effect until disposition of this appeal."<sup>2</sup> In response to the aforementioned order issued by this Honorable Court, Respondent updated the website to state the following:

Update:

On May 15, 2020, in case no. 20-0401, the Texas Supreme Court ordered Judge Sulak's and the 14<sup>th</sup> Court of Appeal's order stayed. In other words, the Texas Supreme Court is temporarily not allowing voters to use the coronavirus as a "disability" to request a mail-in ballot. The Court is anticipated to issue guidance on this issue in the near future.<sup>3</sup>

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<sup>1</sup> Available at <https://www.cameroncounty.us/elections/index.php/register-to-vote-vote-by-mail>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

## ARGUMENT:

**REMEDY SOUGHT BY THE ATTORNEY GENERAL DOES NOT SEEK TO COMPEL A MINISTERIAL DUTY BUT SEEKS TO MANDATE AN ACT THAT VIOLATES TEXAS AND FEDERAL LAW.**

This Honorable Court should deny the relief sought by the Relator. The Relator, by and through the Texas Attorney General, seeks to impose a non-ministerial obligation on Respondent. The Relator would have Respondent Garza conduct an in-depth analysis of requests for disability-based mail-in ballots. Respondent indeed has a ministerial duty under the Texas Election Code to provide a mail-in ballot if the voter's application, on its face, meets the requirements of the Code. However, Respondent has no duty or authority to deny an application based on his own belief or suspicion that any applicant for a mail-in ballot is not disabled, or not disabled enough, for a mail-in ballot. Texas and Federal law requires Respondent to "believe" the voter's sworn application.

Texas election law mandates that Respondent Garza, as the elections administrator, issue ballots to eligible voters who submit applications for mail-in ballots that conform to the statutory requirements. *See* Tex. Elec. Code §63.012(a)(2)(West 2020)(stating an



election officer may not knowingly refuse to accept a person for voting whose acceptance is required by this code); Tex. Elec. Code § 86.001(West 2020)(stating local elections administrator “shall provide an official ballot to the applicant as provided by this chapter” unless it is facially evident from the application that the voter is not eligible). A voter is eligible to vote by mail if they are over 65 years old, incarcerated, expect to be absent from the county during all in-person early voting and on election day, or are disabled. Tex. Elec. Code §§ 82.001-.005(West 2020). In some circumstances, the Legislature requires applicants to provide additional information and documentation supporting their eligibility to vote by mail-in ballot;<sup>4</sup> however, an explanation or qualification of a disability claim is not one of them. See Tex. Elec. Code §82.001-.007(West 2020), Tex. Elec. Code 84.001-.002(West 2020).

Texas Jurisprudence does not empower an elections administrator to conduct such an inquiry. On the contrary, it is established that election officials **do not** have the authority to inquire into facts behind the public record when performing their duties. See *Weatherly v. Fulgham*, 153 Tex. 481, 483-84, 271 S.W.2d 938, 940 (1954), *Ferris v. Carlson*, 158 Tex. 546,

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<sup>4</sup> See, e.g., Tex. Elec. Code §§ 102.001-.002(West 2020) (process for obtaining late ballot by disabled voter includes certificate of a licensed physician or chiropractor or accredited Christian Science practitioner).

549, 314 S.W.2d 577, 579 (1958), *McClelland v. Sharp*, 430 S.W.2d 518, 522 (Tex. Civ. App.—Houston [14th Dist.] 1968, no writ), *State ex rel. Sharp v. Martin*, 186 S.W.2d 111, 114 (Tex. Civ. App.—Amarillo 1945, writ ref'd w.o.m.), *Bray v. Peden*, 213 S.W.2d 469, 471-72 (Tex. Civ. App.—Fort Worth 1948, no writ) (overruling trial court's decision to invalidate five absentee ballots despite factual finding that voter was not physically disabled or ill and did not contemplate being absent from county on election day, among numerous other irregularities, holding such statutory language was directory and not mandatory).

Contrary to the opinion and Relator's request, a mail-in ballot makes it incumbent on the applicant to verify "the information given in this application is true, and [that the applicant] understand that giving false information in this application is a crime;" it does not place the burden on the elections administrator. Tex. Elec. Code § 84.011(West 2020). Knowingly giving false information in the application is a crime. Tex. Elec. Code § 84.0041(West 2020).<sup>5</sup> If the Respondent determines

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<sup>5</sup> There are some serious criminal justices issues implicated because of the existence of this criminal offense and the request of the Relator. If the Relator's request is carried out and Respondent exceeds his statutory authority to inquire further into the basis of an application that is potentially improper, any evidence he gathers may be subject to suppression at a subsequent criminal trial. Texas law prohibits the use of any evidence obtained by any person in "violation of any provisions of the Constitution or laws of the State of Texas, or of the Constitution or laws of the United States of America." Tex. Code Crim. Pro. Ann. art. 38.23(a)(West 2020). The

an applicant is entitled to vote by mail, the clerk shall provide the voter a ballot by mail. Tex. Elec. Code § 86.001(West 2020). If the voter is not entitled to vote by mail, the clerk shall reject the application and give notice to the applicant. *Id.* A rejected applicant is not entitled to vote by mail. *Id.*

Mandating a departure from this legislatively approved statutory scheme is tantamount to directing state and local officials to run afoul of federal disability and election law. *See Nat'l Fed'n of the Blind v. Lamone*, 813 F.3d 494, 507 (4th Cir. 2016), *see also* 52 USC §20104(b)(stating “[n]o notarization or medical certification shall be required of a handicapped voter with respect to an absentee ballot or an application for such ballot, except that medical certification may be required when the certification establishes eligibility, under State law-- (1) to automatically receive an application or a ballot on a continuing basis; or (2) to apply for an absentee ballot after the deadline has passed.”).<sup>6</sup>

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result is if the Relator is taken at face value for the concerns of the amount of potential fraudsters, that there is a massive amount of offenders that will be unable to be prosecuted for voter fraud because any evidence of their crime may be subject to suppression. This is why the issue of election fraud should be left to law enforcement and the Texas Attorney General's Office Election Fraud Unit.

<sup>6</sup> 52 USC §20104 is a portion of U.S. Federal Law referred to as the “Voting Rights Act.”

Voting is a quintessential public activity. *Nat'l Fed'n of the Blind*, 813 F.3d at 507. “No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of the ... activities of a public entity,<sup>7</sup> or be subjected to discrimination by any public entity.” 28 C.F.R. § 35.130(a)<sup>8</sup>. Moreover, “[a] public entity shall not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any service, program, or activity...” 28 C.F.R. § 35.130(b)(8). “In enacting the ADA, Congress explicitly found that ‘individuals with disabilities ... have been ... relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals.’” *Nat'l Fed'n of the Blind*, 813 F.3d at 507 citing *Tennessee v. Lane*, 541 U.S. 509, 516, 124 S.Ct. 1978, 158 L.Ed.2d 820 (2004) (quoting 42 U.S.C. § 12101(a)(7)).

It is concerning that Relator would seek to direct Respondent to

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<sup>7</sup> The definition of “public entity” includes a State or local government, or any department, agency, special purpose district, or other instrumentality of a State or local government. 28 C.F.R. §35.104.

<sup>8</sup> 42 USC §§12101 *et seq.* is commonly referred to as the Americans with Disabilities Act, also known as ADA; 28 C.F.R. §35 is a federal rule enumerated to effectuate the ADA.

inquire more into a claim of disability. Any question beyond asking for an affirmation of a disability may run afoul of the ADA, as it places improper additional burdens on a potential disabled voter.<sup>9</sup> See *Ellen S. v. Florida Bd. of Bar Examiners*, 859 F. Supp. 1489, 1493–94 (S.D. Fla. 1994); *Med. Soc'y of New Jersey v. Jacobs*, CIV. A. 93-3670(WGB), 1993 WL 413016, at \*7 (D.N.J. Oct. 5, 1993)(finding that reading restrictions in 28 C.F.R. §35.30 together “prohibit[s] the imposition of extra burdens on qualified individuals with disabilities when those burdens are unnecessary.”); 52 USC §20104(b) and Tex. Elec. Code Ann. § 102.002 (West 2020).

The whims of Relator should not and cannot supersede federal law. Accepting Relator’s contention in requiring Respondent to inquire more into the basis for a disability claim invites Respondent to expose himself, Cameron County, and the State of Texas to actions under Title II of the Americans with Disabilities Act.<sup>10</sup> Granting the relief sought by the Relator is tantamount to this Honorable Court directly sanctioning disability discrimination. The Court cannot, and should not, allow this

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<sup>9</sup> It is very possible the Relator’s request will also violate the Voting Rights Act.

<sup>10</sup> And maybe the Voting Rights Act.

to occur. Disability discrimination, like all discrimination, is immoral, improper, and impermissible. Respondent simply seeks to carry out his duties, and he will abide by Texas and Federal Law in honestly and fairly administering the elections he oversees.

For these reasons, the Court should deny the mandamus sought by the Relator.

**THERE EXISTS A GENUINE ISSUE OF FACT WHICH PRECLUDES THE ISSUANCE OF A WRIT OF MANDAMUS**

There exists a genuine issue of fact that precludes the issuance of the mandamus sought by the Relator.

The Relator proclaims that Respondent is engaged in an ongoing dereliction of duty to undermine the impending elections to be held in Cameron County, Texas.<sup>11</sup> Relator claims “[t]his Court’s intervention is needed to correct this ongoing misapplication of Texas Law.” RPWM, Pg. 12, ¶1.

Respondent denies all the factual allegations made by the Relator.

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<sup>11</sup> Relator believes, and cites as a need for mandamus, that respondent has publicly proclaimed [his] definition of ‘disability’ trumps the Legislature’s, and [he has] encouraged voters to apply to vote by mail regardless of whether they have any ‘disability’ as the legislature defined that term. RPWM, Pg. 1, ¶1. The relator further proclaims that rather than reject improper application, he is approving more and more each day. *Id.*, Pg. 2 ¶1. Relator claims Respondent Garza seeks to “mislead voters, impose [his] own policy preference, and undermine the integrity of multiple upcoming elections.” *Id.* pg. 3, ¶1.

They are unfounded and unsupported by fact. Respondent is dedicated to the lawful operation of the Cameron County Elections Department and has sworn to carry out the mandates of Texas Law. See Supp. MR 12-14, sworn affidavit of Respondent Remi Garza. Irrespective of the Relator's allegations, Respondent is in fact abiding by the law.<sup>12</sup> As such, there is nothing to be stopped. This is a genuine issue of fact

Relator's Petition is entirely devoid of any developed facts, even though Relator is party to two pending suits that have extensive findings of fact. See Cause No. D-1-GN-20-001610, *Texas Democratic Party, et. al v. Debeauvoir and the State of Texas*, in the 201st Judicial District Court for Travis County, Texas and Civil Action No. 5:20-CV-00438-FB, *Texas Democratic Party, et al, v. Greg Abbott, et al.*, in the United States District Court for the Western District of Texas – San Antonio Division.

It is a longstanding position of the Court that it will not “deal with disputed areas of fact in a mandamus proceeding.” *West v. Solito*, 563

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<sup>12</sup> Before receiving notice of this suit, Respondent was unaware of the Relator's concerns/complaints. This is rather uncharacteristic. The Relator has sent other counties direct demand letters about concerns with compliance with the Governor's Executive Orders. In a previous instance, Relator sent Cameron County a demand letter with questions and concerns regarding compliance with Gun Carry Laws. It is unfortunate the Realtor did not take the opportunity to discuss these matters before litigation was initiated and judicial resources expended.

S.W.2d 240, 245 (Tex. 1978), *see also* *Rogers v. Lynn*, 121 Tex. 467, 49 S.W.2d 709 (Tex. Comm'n App. 1932, adopted), rehearing denied, 121 Tex. 467, 51 S.W.2d 1113.

The immediate matter before the court is similar to, and no different than, the land controversy in *Holcomb v. Robinson*, 118 Tex. 395, 15 S.W.2d (Tex. Comm'n App. 1929, adopted). In *Holcomb*, “Relator allege[d] the land [in question was] ... part of the public domain, belonging to the unappropriated public free school fund.” *Holcomb*, 118 Tex. at 395 - 396, 15 S.W.2d at 1028. Contrariwise, “Respondents allege[d] [the property in question was] ... private property, the title to which [was] evidenced by a valid patent.” *Id.* at 396, 1028. The Commission concluded, and the Court adopted, the finding that, “[m]andamus will not issue to compel a public officer to perform an official act ... where an issue of fact is raised by the pleadings, duly authenticated.” *Id.*

A more appropriate and available remedy to address the Relator’s complaints is a declaratory judgment coupled with a request for a temporary restraining order/permanent injunction. *See* Tex. Civ. Prac. & Rem. Code Ann. § 37.002(b)(West 2020), Tex. R. Civ. P. 680, Tex. R.



Civ. P. 692, TX. R. Cameron Cty Rule 1.2, and TX. R. Cameron Cty Rule 1.3). A new cause of action would not be initiated. Relator is already party to two pending district court cases wherein guidance on the matter of voting in the COVID-19 era is being litigated. “Since relator has an adequate remedy in the district court... he should invoke that court's jurisdiction.” *Grant v. Ammerman*, 437 S.W.2d 547, 550 (Tex. 1969), *see also Donald v. Carr*, 407 S.W.2d 288 (Tex. Civ. App.—Dallas 1966, no writ).

As it was true in 1929, it is true in 2020. A mandamus may not lie if a fact dispute exists between the Relator and Respondent. For these reasons the Court should refuse the Respondent’s Petition.

**THE HARM ALLEGED BY THE RELATOR IS EXAGGERATED AND NONEXISTENT.**

Relator supports the immediate need for a mandamus by decrying that without immediate intervention from the Court Respondent will cause a surge of requests for mail-in ballots that improperly cite disability. *See* RPWM, pg. viii, (...more voters seek impermissible mail-in ballots every day), pg. 16-17 (“...if Respondents persist in issuing mail-in ballots to ineligible voters, the State will have no practical way to restore the integrity of the upcoming elections.”). Relator offers no

factual basis to support these assertions.

The Court may consider the issuance of a mandamus if the normal process is inadequate to remedy harm. *In re Francis*, 186 S.W.3d 534, 538 (Tex. 2006). However, as the facts are applied to Cameron County, there is a practical way to remedy any possible harm. During the ongoing public health crisis very few individuals have sought mail-in ballots citing the disability exemption.

The Cameron County Elections Department maintains a database to monitor mail-in ballots. As of May 15, 2020, 2,519 applications for mail-in ballots for the July runoff election have been processed. Of those applications, 5 applications for mail-in ballots citing disability have been approved. There are currently 8 applications citing disability for a mail-in ballot pending review.

The following is a breakdown of the request for mail-in ballots for the upcoming primary runoff election, as compared to years past:

ELECTION	BALLOTS REQUESTED	YDS DISABILITY	RM - DISABILITY	TOTAL
PR20	2519	29	5	34
P20	2744	36	2	38
P18	1794	15		15
PR18	1361	17	1	18
GN18	8850	92	40	132
CA19	1719	35	3	38
				275

At most, there are 13 potential ballots that may have been requested in a manner in which the Relator complains.<sup>13</sup>

As of 2018, Cameron County, Texas has an estimated 203,616 registered voters.<sup>1415</sup> This means 0.0064% of the registered voters in Cameron County have requested a mail-in ballot citing disability. If the Relator is taken at face value, a 0.0064% equates to a disproportionate amount of requests and there is no “practical way to restore the integrity of the upcoming elections.” RPWM, Pg. 16-17.

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<sup>13</sup> The 29 Annual Application Requested Mail-in Ballot Applications citing disability are not part of the nexus as those would have been requested regardless of the current public health crisis.

<sup>14</sup> See *Cameron County Voter Registration Figures, Texas Secretary of State*, accessible at <https://www.sos.state.tx.us/elections/historical/cameron.shtml>.

<sup>15</sup> Though the State Executive persists in the need for in-person voting to occur, they have nevertheless closed executive offices to visitors so their staff may be safe from exposure to the infectious disease the State Executive seeks to expose Texans to on election day. The website operated by Texas Secretary of State Ruth R. Hughs states “COVID-19 – As recommended precautions continue to increase for COVID-19, the James E. Rudder Building will be closed to visitors and customers beginning Wednesday March 18, 2020.” <https://www.sos.state.tx.us/index.html> accessed May 15, 2020; The website operated by Governor Abbott states “guided tours of the Governor’s Mansion have been temporarily suspended. In addition to being a historical site, the Governor’s Mansion is also the residence of the First Family of Texas and it is not possible to safely provide tours while also adhering to the CDC’s health standards.” <https://gov.texas.gov/first-lady/tours>, accessed on May 15, 2020; the website for the Attorney General states “The Texas Attorney General’s – Child Support Division is in the process of transitioning to providing virtual child support services. During this time, while physical child support offices will be closed to customers and visitors, services will continue to be provided over the telephone and internet. We remain committed to continuing to support those we serve during this public health event.” [https://childsupport.oag.state.tx.us/wps/portal/CSIMobile/MobileCSIHome!/ut/p/a1/04\\_Sj9CPykssy0xPLMnMz0vMAfGjzOJ9\\_H1MDN1NjHwsPA1NDRwDfILNnD18DQ0MDfULsh0VAXHbQ8M!](https://childsupport.oag.state.tx.us/wps/portal/CSIMobile/MobileCSIHome!/ut/p/a1/04_Sj9CPykssy0xPLMnMz0vMAfGjzOJ9_H1MDN1NjHwsPA1NDRwDfILNnD18DQ0MDfULsh0VAXHbQ8M!/) accessed May 15, 2020.

This is absurd. Practically speaking, if Respondent needs to flag the aforementioned ballots submitted by the 13 voters, he could do so easily, right up to and until the 13 ballots are opened and counted on election day. At which time, it would be appropriate for law enforcement or the Texas Attorney General fraud investigators to conduct a criminal investigation.

A review of the records maintained by Respondent reflects no federal, state, or county election has been determined by a margin of 13 votes. As such, it is more appropriate to investigate any voter that improperly requested a mail-in ballot rather than intimidate a portion of the populace into not exercising their legal right to vote. Nevertheless, all of this is speculation. Relator admits and concedes the veracity of a claim made by an applicant may not be investigated. RPWM, pg. 16. There simply is no mechanism in law to verify a claim of “disability.” Relator accuses Respondent of “willful blindness” in approving mail-in ballot applications citing disability. *Id.* But the numbers do not support this allegation. There simply has not been an alarming increase in the request for mail-in ballots citing disability.

For these reasons, there is no harm for the mandamus to remedy.

In addition, if it were the case law enforcement needed to investigate any ballots in question, they are so few (.0064% of registered votes in Cameron County), that said investigation could easily be undertaken.<sup>16</sup> Consequently, this Honorable Court should deny the relief sought by the Relator.

**THE PREDICATE CAUSE FOR THE RELATOR'S PETITION FOR WRIT OF MANDAMUS HAS BEEN STAYED BY THIS HONORABLE COURT AND AS SUCH THE IMMEDIATE MATTER BEFORE THIS HONORABLE COURT IS MOOT.**

The Honorable Court should dismiss Relator's Application as moot. On May 15, 2020, in No. 20-0401, *In Re: Texas*, this Honorable Court issued a stay of the 14th Court of Appeals Injunction permitting individuals to cite fear of exposure to COVID-19 as a disability. It is said injunction that the Relator truly objects as it specifically permits a lack of COVID-19 immunity to serve as a basis for citing disability in an application for a mail-in ballot. Consequently there is no need for the Court to entertain any mandamus as the relief sought by the Relator is no longer necessary.

A matter is moot when no effective relief may be awarded. *See*

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<sup>16</sup> As the immediate cause is an original action without a properly developed record or any findings of fact from a trial court, all parties have insufficient information to determine if there is a greater harm to public safety, health, and the integrity of the impending election from mail-in ballots or from unknown and unsubstantiated fear of fraud and abuse.

*Austin v. City of Alice*, 193 S.W.2d 290, 293 (Tex. Civ. App.—San Antonio 1946, writ ref'd n.r.e.). When a case becomes moot it should be disposed of by dismissal. *Univ. Interscholastic League v. Sims*, 133 Tex. 605, 606, 131 S.W.2d 94 (Comm'n App. 1939, adopted).

Respondent is dedicated to upholding the laws of Texas and will abide by the orders issued in No. 20-0401. For these reasons, the matter immediately before for this Honorable Court is moot and the application for the writ of mandamus should be denied.

### **PRAYER**

Relator's request should be denied.

Respectfully submitted,

/s/ **JUAN A. GONZALEZ**

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### **CERTIFICATE OF COMPLIANCE**

This pleading complies with Tex. R. App. Proc. 9.4. Accordingly, to the word count function in the computer program used to prepare the document, this pleading contains 4,345 (4,500 Max) words, excluding the parts exempted by Tex. R. App. Proc. 9.4(i)(1). This pleading complies with the typeface requirements of Tex. R. App. Proc. 9.4(e) because it has been prepared in proportionally spaced typeface using Microsoft Word in fourteen-point Century Schoolbook, with twelve-point Times New Roman footnotes.

/s/ Edward Adrian Sandoval  
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/s/ Juan A. Gonzalez  
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/s/ Daniel N. Lopez  
Daniel N. Lopez

### **CERTIFICATE OF SERVICE**

I certify that I have served this the following attorney parties on  
this 18<sup>th</sup> day of May, 2020.

Via the electronic service:

/s/ Edward Adrian Sandoval  
Edward Adrian Sandoval



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This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below:

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Status as of 05/18/2020 16:07:03 PM -05:00

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