

No. 20-0394

IN THE SUPREME COURT OF TEXAS

IN RE STATE OF TEXAS
Relator

On 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

**DALLAS COUNTY ELECTION ADMINISTRATORS RESPONSE TO
RELATOR'S PETITION FOR WRIT OF MANDAMUS**

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STATEMENT OF JURISDICTION

Because Petitioner has not established a predicate for mandamus relief and cannot show that a justiciable or ripe controversy exists with Respondent Toni-Pippins Poole, this does Court does not have original jurisdiction under Texas Elections Code § 273.061. In addition, Toni-Pippins Poole does not have the authority to take the non-ministerial action urged in the Petition, which would violate her duty to perform a ministerial act. Finally, the Petition raises questions of fact that go to the heart of the request for mandamus, precluding the exercise of the Court's original jurisdiction.

ISSUE(S) PRESENTED

Issue 1: Whether the Petitioner can bring a mandamus action against the Respondent without a predicate request and erroneous refusal to act.

Issue 2 (restated): Whether the Respondent has a ministerial duty under Texas law to look behind the mail ballot application selection of disability as basis for eligibility, on an otherwise facially compliant mail ballot application.

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**DALLAS COUNTY ELECTION ADMINISTRATORS RESPONSE TO
RELATOR’S PETITION FOR WRIT OF MANDAMUS**

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF TEXAS:

Toni Pippins-Poole, Dallas County Elections Administrator (“Election Administrator” or “Respondent”), files this Response to Relator’s Petition for Writ of Mandamus

STATEMENT OF FACTS

1. COVID-19.

Due to the worldwide pandemic caused by COVID-19 the Governor of Texas and local government officials issued emergency orders to mitigate the spread of COVID-19. As the State explained in comments to the media concerning GA-14,

the purpose of the restrictions is to keep as few businesses open as possible to prevent the spread of the virus.¹ GA-14 was followed by other orders, including GA-16, 18, and 20. See <https://lrl.texas.gov/legeLeaders/governors/searchProc.cfm>. As of the date of this briefing, Texas is not yet fully opened, a vaccine has not been found for COVID-19, and the virus continues to spread and kill.

2. Statements regarding the disability selection for a mail-in-ballot application, as it relates to COVID-19.

On April 6, 2020, the Texas Secretary of State (“SOS”) issued an Advisory 2020-14 regarding COVID-19. The Advisory states:

....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 of injuring the voter's health.” (Sec. 82.002). If a voter believes they meet this definition, they can submit an application for ballot by mail.

<https://www.sos.state.tx.us/elections/laws/advisory2020-14.shtml>. The SOS, not the Attorney General, is tasked with interpreting the Election Code. TEX. ELEC. CODE § 31.003 (“The Secretary of State shall obtain and maintain uniformity in the application, operation, and interpretation of this code and of the election laws outside this code.”). On May 1, 2020, the Texas Attorney General (“Attorney General”) sent a letter to all County Judges and County Election Officials (“AG’s Letter”)

¹ Still Not Sure if Your Business is Essential? There’s a Form for that. Dallas Morning News. April 14, 2020. Available at <https://www.dallasnews.com/business/retail/2020/04/14/still-not-sure-whether-your-business-is-essential-theres-a-form-for-that/>

regarding its interpretation of what constitutes a disability for purposes of applying for an early voting mail-in-ballot. *See* Relator’s Petition, Exhibit MR 256-258.

At a May 5, 2020 meeting of the Dallas County Commissioners Court (the “CC Meeting”), Commissioner John Wiley Price sponsored a resolution that “support[ed]’ allowing Dallas County eligible voters who want to vote by mail due to COVID-19 to check the box for “disability” and submit an application for a mail-in-ballot. *See* Dallas County May 5, 2020 Commissioners Court hearing at <https://dallascounty.civicweb.net/document/643591?splitscreen=true&media=true> (“CC Hearing Audio”), at 28:55 to 29:39. The resolution was discussed and eventually approved by the Commissioners Court.

The Respondent is not a member of the Dallas County Commissioners Court (“Commissioners Court”) and did not sponsor nor weigh in regarding the resolution. *Id.* at 26-40.

During the Commissioners Court’ discussion, Commissioner Koch referenced the AG’s Letter and an e-mail from the Respondent (the “Pippins E-Mail”) regarding same. Commissioner Koch read from the e-mail stating as follows:

County Court members I’m reading in full, I’ll skip the part that she cites, ‘FYI, attached is the guidance letter from the AG EFU regarding the eligibility reason of disability and it’s definition and fear of contracting COVID-19 alone is not a requirement to receive a ballot by mail.’ She cites the letter and it states after this, ‘See complete decision on the part of the AG and the attached letter.’ She then states, and this is very important, ‘However, as Elections Administrators have done in

the past, we do not investigate the reason or require further explanation for the disability if the application is marked disability.”

Id. at 36:09 to 37:14. This snippet from an e-mail constitutes the entire factual basis of the Petitioner’s mandamus action against Respondent.

3. Texas election administrators process for approving mail-in-ballot applications.

Voters can submit mail ballot applications by either 1) using the official form prescribed by the SOS, 2) submitting an informal application so long as it contains all of the information required by Title 7, or 3) using the official Federal Postcard Application. TEX. ELEC. CODE §§ 84.001(c), 84.011, & 84.013; 101.001, *et seq* & 114.001, *et seq.* One requirement of Title 7 is that the voter include on their application for a mail ballot “an indication of the ground of eligibility for early voting[.]” *Id.* at § 84.002(a)(6). The Elections Administrator serves as the early voting clerk (“EV Clerk”) who reviews each mail ballot application to determine whether each application fully complies with the applicable requirements prescribed by Title 7 of the Texas Election Code (“Title 7”). *Id.* at §§ 86.001(a) & 86.008(a). For eligibility for a mail ballot based on age or disability, the voter need only select the basis of eligibility. *See* <https://webservices.sos.state.tx.us/forms/5-15f.pdf>. The applicant for a mail ballot is not required to provide a certification (or other documentation) of the disability or to disclose the disability. TEX. ELEC. CODE §§ 84.001, 84.002, 84.013, 84.032.

CLARIFICATION OF FACTS

The Petitioner's mandamus petition alleges that the Commissioners Court, in light of the COVID-19 threat, issued a resolution providing that "a Dallas County voter who wants to vote by mail can send an application for ballot by mail to Dallas County Elections, check the box on the application indicating 'Disability' as the reason for voting by mail, and the elections division will process that application as normal." *See* Relator's Petition, p. 10. The Petitioner cites to the audio/video recording of the Commissioners Court meeting and an unsigned copy of the *proposed* resolution that was on the court's agenda. However, the actual resolution voted on and adopted was amended and read into the record by the sponsor, Commissioner Price. The actual language of the approved resolution stated:

Dallas county commissioners court **supports** that a Dallas county voter who wants to vote by mail **should be** allowed to send an application for ballot by mail to the Dallas County elections, check the box on the application indicating disability as the reason for voting by mail and the election division process that application as normal.

See CC Hearing Audio at 28:55 to 29:39 (emphasis added).

Thus, although the Petitioner cites this Court to the recording, he fails to accurately quote the language of the resolution that was actually adopted.

ARGUMENT

- I. **Relator cannot satisfy the requirements for a petition for writ of mandamus.**

a. Mandamus is not available without a predicate request and erroneous refusal to act.

Due to the extraordinary nature of the remedy, the right to mandamus relief generally requires a predicate request for action by the respondent, and the respondent's erroneous refusal to act. *In re Perritt*, 992 S.W.2d 444, 446 (Tex. 1999) (orig. proceeding). The mandamus petition lacks any allegation, much less evidence, that a predicate request has been made to Respondent to accept or reject any ballot "based solely on a generalized risk of contracting a virus." Relator's Petition, at p. x. Nor has there been evidence of a refusal by Respondent to act on any ministerial duty in compliance with Texas Law.

The Petitioner's mandamus petition against the Respondent is based entirely on the following:

On May 5, 2020, the Dallas County Commissioner's Court issued a resolution stating that, in light of the COVID-19 threat, "a Dallas County voter who wants to vote by mail can send an application for ballot by mail to Dallas County Elections, check the box on the application indicating 'Disability' as the reason for voting by mail, and the elections division will process that application as normal." MR.1509; MR.1500-01.9 **Pippins-Poole provided the Attorney General's May 1 opinion to the Commissioner's Court while stating, "however . . . we do not investigate the reason or require further explanation for the disability if the application is marked disability."**

See Relator's Petition, Page 10 (emphasis added). This assertion is incomplete and misleading. As indicated in the "Clarification of Facts," the resolution only "support[ed]" voting by mail. *See* CC Hearing Audio at 28:55 to 29:39. Further, the

Petitioner is relying on a statement made by a commissioner, J.J. Koch, at the Commissioner Court Meeting, wherein the commissioner is reading from the Pippins E-Mail. *Id.* at 36:09 to 37:14. Notably, the Petitioner omits important language from commissioner’s recitation, which included the following:

She cites . . . ‘FYI, attached is the guidance letter from the AG regarding eligibility by reason of disability...and fear of contacting COVID-19 alone is not a requirement to receive a ballot by mail...however, as election administrations have done in the past, we do not investigate or require further explanation for the disability if the application is marked disability’.

Id. at 36:09 to 37:14 (emphasis added). To further confuse and mislead, the Petitioner’s purported recitation of the Pippins E-Mail is found in Section IV of the Petition, titled “Early Voting Clerks for Five Texas Counties Broadcast their Intent to Approve Requests for Mail-In Ballots Based on Their Own Definition of ‘Disability.’” However, the e-mail establishes that the Respondent was simply providing the Commissioners the AG’s Letter and stating her practice, which was consistent with that of other elections administrators and, most importantly, in compliance with the Election Code.

This record is void of any evidence that the Respondent “broadcasted [her] intent to approve request for mail-in ballots based on [her] definition of disability,” as alleged by the Petitioner. *See* Petition, pp. 9-10.

Mandamus will not issue to compel a public official to perform an act unless the official has refused to perform and the right to have the act performed is clear.

City of Ingleside v. Johnson, 537 S.W.2d 145 (Tex. Civ. App. – Corpus Christi 1976, orig. proceeding). There is no evidence before this Court that Respondent has refused to act in conformity with Texas law; thus, mandamus is not proper. The Petitioner has simply attempted to concoct a “refusal to perform” in order to try to obtain through mandamus, what should be sought through a declaratory judgment action. If the Petitioner desires to seek a declaration of the law relating to “disability,” it can do so. But, attempting to achieve such a declaration by a direct order of mandamus against Respondent is improper.

b. Mandamus is not proper to enforce non-ministerial acts.

Mandamus will issue to compel a public official to perform a ministerial act, not a discretionary act. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991); *Harris County v. Walsweer*, 930 S.W.2d 659, 667 (Tex. App.—Houston [1st Dist.] 1996, writ denied). Writs of mandamus issue to control the conduct of an officer of government, judicial or administrative, only when the duty to do the act commanded is clear and definite and involves the exercise of no discretion—that is, when the act is ministerial. *Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). This Court has explained:

The distinction between ministerial and judicial and other official acts seems to be that where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment, the act is ministerial; but where the act to be done involves the exercise of discretion or judgment in

determining whether the duty exists, it is not to be deemed merely ministerial.

Comm'r of Gen. Land Office v. Smith, 5 Tex. 471, 479 (1849). Here, as established *supra*, Statement of Facts, Section 3, the approval of the application for mail in ballot that complies with the statute, is a ministerial act. Further, the Respondent does not have the authority to look behind the application as to the basis for the disability and there is no such requirement in the Election Code. *See, e.g.*, TEX. ELEC. CODE § 86.0015 (only requires, as to the disability, that the ballot "...indicates the ground of eligibility is age or disability."). The Petitioner has based its mandamus petition against the Respondent on its speculation that it is her intent to apply her own definition of disability in reviewing applications and/or encourage voters to claim a disability due to fear of getting COVID-19. Yet, the only evidence the Petitioner has provided to this Court to support this unfounded proposition is an incomplete, misleading hearsay account of the Pippins' E-Mail and the CC Meeting. That e-mail merely provided the AG's Letter to the Commissioners Court and set forth the well-established practice of election administrators state wide, i.e., they do not ask for proof of the disability or basis of disability. And, for stating that well-established fact, the Petitioner is seeking extraordinary mandamus relief to force the Respondent to do something not required by the Election Code – looking behind the claimed disability in each case or require the applicant to include the nature of the disability in the application -- which is clearly a non-ministerial act, since it is not required by

the Election Code. In fact, the Petitioner is trying to achieve the opposite of compelling performance of a ministerial act, i.e., he is trying to have this Court order the Respondent not perform the ministerial act of approving a mail ballot that is facially compliant with the Election Code. The Petitioner's request for mandamus relief as to the Respondent must therefore be denied. *See, e.g., Tex. Dep't of Ins., Div. of Workers' Comp. v. Brumfield*, No. 04-15-00473-CV, 2016 WL 2936380 (Tex. App. – San Antonio, May 18, 2016) (plaintiff's failed "...to include any specific facts indicating that the Commissioner acted without legal authority or failed to perform a purely ministerial act.").

c. Failure to perform a ministerial act cannot be based on the action or inaction of a political body that was not advocated or adopted by the Respondent.

Mandamus is not appropriate to compel Respondent just because the Petitioner disagrees with statements of the Commissioners Court. The Commissioners Court does not have authority over the mail ballots disability requirements or the application, which are governed by the Election Code and, in accordance with the statute, the SOS guidance. TEX. ELEC. CODE § 31.001, *et al.* Moreover, the sponsor of the resolution, Commissioner John Willey Price, stated "we are not ordering anything." *See* CC Hearing Audio at 25:55-26:26 and 22:30-22:50. Further, the Respondent has never stated she intends to ignore the Election Code and/or the SOS, and the Petitioner has not provided any evidence of such

intentions. As established, *supra*, the record is deplete of any evidence the Respondent failed to perform a duty clearly prescribed by law. *Id.* at 20:35-1:38. Instead, the Petitioner attempts to impute the resolution of the Commissioners Court to the Respondent in an attempt to concoct a factual and legal basis for mandamus relief. However, there is no evidence that the Respondent advocated for or supported the Commissioners Court non-binding resolution, nor has the Respondent indicated, one way or another, whether she supports or disagrees with the resolution. These facts do not support mandamus.

d. Mandamus is inappropriate for speculative, hypothetical actions.

The mandamus action is based on some future speculative not yet violated alleged [or threatened violation] duty, which is also not a ministerial act. A mandamus action requires certainty as to both pleadings and facts. *Johnson v. Hughes*, 663 S.W.2d 11, 12 (Tex. App.—Houston [1st Dist.] 1983, orig. proceeding). Speculation is not proper for a petition for writ of mandamus. *Frink v. Blackstock*, 813 S.W.2d 602, 604 (Tex.App.—Houston [1st Dist.] 1991, orig. proceeding) (denying mandamus relief when the petition “leaves us speculating about the justification for the requested coercive action”); *Fisher v. Harris County Republican Executive Comm.*, 744 S.W.2d 339, 340 (Tex.App.—Houston [1st Dist.] 1988, orig. proceeding) (explaining extraordinary nature of remedy of mandamus requires specific and positive averments in petition showing clear and unqualified

right to relief); *West v. Solito*, 563 S.W.2d 240, 245 (Tex.1978) (court should not deal with disputed areas of fact in mandamus proceeding).

II. The Court does not have jurisdiction of Relator’s petition for writ of mandamus.

a. There is no justiciable controversy that can be resolved by an order of this Court.

To bring an action in Texas, a party must have standing. *See Daimler Chrysler Corp. v. Inman*, 252 S.W.3d 299, 304 (Tex. 2008). The general test for standing is whether there is a real controversy between the parties that will actually be determined by the judgment sought. *Tex. Ass’n of Bus.*, 852 S.W.2d at 446.

First, the Relator’s Petition does not allege a real controversy between the parties, which could be resolved by the judicial relief that is sought by Relator. *State Bar v. Gomez*, 891 S.W.2d 243, 245-46 (Tex. 1994). The Respondent has never stated that community spread is a disability, to be eligible for an early voting ballot. And, she has never said that “fear” of catching a virus was a disability. As noted, *supra*, Section I, excerpts of the Pippins E-Mail, read by a commissioner at the CC Meeting, merely notified the Commissioners Court of the AG Letter and stated a fact regarding the Election Code and the practice of election administrators. This does not create a justiciable controversy.

Second, to have standing, the Petitioner must allege an injury that is “actual or imminent, not hypothetical.” *See DaimlerChrysler Corp. v. Inman*, 252 S.W.3d

299, 304–05 (Tex.2008). As recently noted by this Court in *In re Greg Abbott*, “[t]o establish standing based on a perceived threat of injury that has not yet come to pass, the ‘threatened injury must be certainly impending to constitute injury in fact’; mere ‘[a]llegations of possible future injury’ are not sufficient.” See *In re Greg Abbott*, Cause No. 20-0291, 2020 WL 1972433 (Tex., April 23, 2020) (memo op.) (citation omitted). This Court further noted in *In re Greg Abbott* “[s]tanding is specific to each individual plaintiff and to each of the plaintiff’s individual claims.” *Id.* (citation omitted).

The Petitioner has not brought forward any evidence that Respondent has stated that she considers that the fear of contacting a virus is a disability for an early voting ballot or that she would refuse to reject an early voting application based solely on the generalized risk of contacting a virus. Thus, there simply is no justiciable controversy and this mandamus must be dismissed against the Respondent.

b. Relator’s claims are not ripe.

Ripeness is an element of subject matter jurisdiction. *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 850 (Tex. 2000); *Patterson v. Planned Parenthood*, 971 S.W.2d 439, 442 (Tex. 1998). The ripeness doctrine examines when claims may be brought and asks, “whether, at the time a lawsuit is filed, the facts are sufficiently developed ‘so that an injury has occurred or is likely to occur, rather than being

contingent or remote.” *Waco Indep. Sch. Dist. v. Gibson*, 22 S.W.3d 849, 851-52 (Tex. 2000). The ripeness doctrine allows courts to avoid premature adjudication and serves constitutional interests in prohibiting advisory opinions. *Id.* at 852.

Here, the Petitioner is relying on a non-binding resolution of the Commissioners Court, which has no legal effect, and a statement by a commissioner reading excerpts from the Pippins E-Mail (which states the law and the general practices of election administrators), in an effort to prematurely and improperly mandamus the Respondent. *See* CC Hearing Audio at 20:35-1:38; Relator’s Petition, pp. 9-10 (Cameron County indicated “...Our office has no legal authority to administratively require voters to substantiate their disability at the time the application is submitted.”). The statement of fact that election administrators do not look into the basis of a disability on the application, conforms to the Election Code and the state-wide practice of election administrators.

The Respondent indicates that she will continue to do what she and other election administrators across the state has done, when disability is selected as the basis for eligibility for a mail ballot, i.e., review for facial compliance as required by the Election Code. The responsibility of the truthfulness of the disability selection is on the registered voter who makes the application, and who is subject to criminal penalties for submitting a fraudulent application. TEX. ELEC. CODE § 84.0041.

This matter is simply not ripe for adjudication.

III. The Election Code does not support the Petitioner’s inference that Respondent must look into the disability submitted on a ballot by mail application.

In construing a statute, “...a court shall diligently attempt to ascertain legislative intent and shall consider at all times the old law, the evil, and the remedy.”

TEX. GOV’T Code § 312.005. In discerning legislative intent:

1. an unambiguous statute is interpreted according to the plain meaning of the words contained in the statute. *Id.* at § 312.002(a); *TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011); *State ex rel. State Dep’t of Highways & Pub. Transp. v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2000);
2. words are...given their ordinary meaning.” *See TGS-NOPEC*, 340 S.W.3d at 439; *Gonzalez*, 82 S.W.3d at 327;
3. the court “presume[s] the Legislature included each word in the statute for a purpose.” *See Eddins-Walcher Butane Co. v. Calvert*, 156 Tex. 587, 298 S.W.2d 93, 96 (1957); and
4. the court presumes “that words not included were purposefully omitted.” *See Cameron v. Terrell & Garrett, Inc.*, 618 S.W.2d 535, 540 (Tex. 1981).

In other words, “[w]here text is clear, text is determinative of...[legislative] intent.”

Entergy Gulf States, Inc. v. Summers, 282 S.W.3d 433, 437 (Tex. 2009) (op. on reh’g); *see Alex Sheshunoff Mgmt. Servs., L.P. v. Johnson*, 209 S.W.3d 644, 651-52 (Tex. 2006). Here, the text of the Election Code could not be clearer. The Election

Code defines disability as follows:

DISABILITY. (a) A qualified voter is eligible for early voting by mail if the voter has 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 of injuring the voter's health.

TEX. ELEC. CODE § 82.002. Additionally, Chapter 84 of the Election Code provides additional requirements for the early voting mail-in-ballot application. *Id.* at §§ 84.001, 84.002, 84.013, 84.032. The Petitioner, in essence, is asking this Court to insert language into the statute that requires the applicant to state the nature of their disability in the application and/or that the Respondent investigate the veracity of the disability selection in the application. But, the Election Code provision dealing with early voting mail ballots does not require that the applicant state the disability, nor does the Election Code direct or require the Respondent to look behind disability selection on the application. If the Legislature meant to require the applicant to state the disability and the Respondent to confirm the disability, it could have done so, but it does not. *Id.* at §§ 84.002, 84.011. In fact, previous versions of the statute required a certification from a doctor, but such requirement was removed. *See* Act of May 27, 1981, 67th Leg., R.S., ch. 301; *State ex rel. Sharp v. Martin*, 186 S.W.2d 111, 114 (Tex. Civ. App.—Amarillo 1945, writ ref'd w.o.m.). Further, in a recent amendment to the Election Code, Chapter 13, which has yet to take effect, the Legislature specifically required that an applicant, seeking an exemption from the voter identification requirement based on disability, provide as follows:

- (i) An applicant who wishes to receive an exemption from the requirements of Section 63.001(b) on the basis of disability must include with the person's application:
 - (1) written documentation:
 - (A) from the United States Social Security Administration evidencing the

applicant has been determined to have a disability; or....²

To further support the interpretation that the Respondent is not required to look behind the application as to the disability, one need only examine the application promulgated and approved by the SOS which only has a check box for disability with no requirement that the disability be stated.³ In fact, the Attorney General has also supported this interpretation in a 2015 opinion, stating in a footnote:

Consequently, while proof of disability may not be necessary to apply for a mail-in ballot...

Tex. Atty Gen Op. KP-2009, Fn. 2 (2015) (emphasis added). This interpretation is further supported by the Secretary of State, who has indicated “[t]he Attorney General has issued an opinion saying they do not believe that being afraid of Covid is not [sic] a disability. **However, you do not have any authority to police that. If a voter checks disability, you must process the request and send them a ballot.**”

Supp Mr. 7 (emphasis added). In essence, the Attorney General filed a mandamus against Respondent for stating a fact regarding the disability selection for a mail ballot, which he himself has essentially acknowledged in an Attorney General opinion and which has been reiterated by the Secretary of State.

In summary, the Election Code does not empower the Elections Administrator to make disability determinations for early voting mail ballots under Texas law. The

² See <https://statutes.capitol.texas.gov/Docs/EL/htm/EL.13.htm>.

³ See <https://webservices.sos.state.tx.us/forms/5-15f.pdf>.

Elections Administrator merely examines mail-in ballot applications and the mail-in-ballot for completeness and compliance with the Election Code. The voter makes that determination whether they have a disability in accordance with the statute, subject to the penalties for untruthfulness on the application. Furthermore, Federal law also appears to prohibit the Respondent from requiring a disabled voter to submit a medical certification of the disability in order to receive an absentee ballot. See 52 U.S.C.A. § 20104(b), 52 U.S.C.A. § 20107(4) (“handicapped” means having a temporary or permanent physical disability’).

PRAYER

WHEREFORE, the Elections Administrator prays that this Court deny the Relator’s Petition For Writ of Mandamus and grant it any other relief it may be entitled, in law or in equity.

Respectfully submitted

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CERTIFICATE OF COMPLIANCE

This brief was prepared using Microsoft Word. Relying on the word count function in that software, I certify that this brief contains 4,256 words (exclusive of the caption, identify of parties and counsel, table of contents, index of authorities, statement of the case, statement of issues, signature, proof of service, certificate of compliance, and certificate of service).

/s/ Barbara S. Nicholas

CERTIFICATION

The undersigned counsel of record certifies that he has reviewed this petition, as well as the record, and concluded that every factual statement in this petition is true, correct, and based on competent evidence included in the appendix or record. The undersigned counsel of record further certifies that the pleadings, orders, and judgment contained in the appendix are true and correct copies of the originals.

/s/Barbara S. Nicholas

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing instrument has been served upon all parties of record.

DATED: May 18, 2020

/s/ Barbara S. Nicholas

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