

CASE NO. 20-0394

IN THE SUPREME COURT OF TEXAS

On Petition for Writ of Mandamus (Original Proceeding)

**BRIEF AMICUS CURIAE OF THE NATIONAL MEDICAL
ASSOCIATION, DOCTORS FOR AMERICA, DR. JOSEPH VARON, DR.
DONA MURPHEY, DR. MARY L. BRANDT, AND DR. BICH-MAY
NGUYEN**

Respectfully submitted,

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Oral Argument

Set for May 20, 2020

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IDENTITY OF AMICI

1. National Medical Association is a national organization primarily comprised of African American physicians that was formed in 1895. The National Medical Association is a leader in medicine, representing the interests of more than 30,000 African American physicians. The NMA is committed to improving the quality of health in America and among minority and disadvantaged groups through advocacy, professional development, advocacy, research, and partnerships with federal and private agencies.

2. Doctors for America is a national organization with more than 20,000 members that is committed to providing for greater availability of medical care. DFA believes that the COVID-19 Pandemic is a problem that must be understood and addressed using sciences such as virology, epidemiology, public health and biomedicine.

3. Dr. Joseph Varon is a physician practicing medicine in Houston, Harris County, Texas. He is Board Certified in Internal Medicine with a sub-specialty in Pulmonary Diseases and another sub-specialty in Critical Care Medicine. He has authored more than 790 peer-reviewed journal articles, 10 full textbooks, and 15 dozen book chapters to the medical literature and serves as Editor-in-Chief for Critical Care and Shock and Current Respiratory Medical Reviews. He is a Diplomate or Fellow of numerous distinguished medical colleges, boards, or

societies. Dr. Varon is CEO of the United Memorial Medical Center and United General Hospital in Houston

4. Dr. Dona Murphey (Dr. Laila Woo-Colburn of Baylor College of Medicine is a consultant to Dr. Murphey) is a physician-scientist in Texas. Dr. Murphey is integrally involved in the public discourse regarding COVID-19 and has published a number of opinion pieces and provided interviews to the media on the topic. She is a member of the National Board of Doctors for America.

5. Dr. Mary L. Brandt is a pediatric surgeon at Baylor College of Medicine.

6. Dr. Bich-May Nguyen, MD, MPH, FAAFP, is a family physician, educator, and research director at a community-based family medicine residency program in the Greater Houston area. She serves on the board of Doctors for America.

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Twitter, <https://dshs.texas.gov/coronavirus>.” <https://twitter.com/texasdshs/status/1255920501102465024?s=11>.8

STATEMENT OF INTEREST AS AMICUS CURIAE

Amici are the National Medical Association and Doctors For America (the Association Amici)¹, and Dr. Joseph Varon, Dr. Dona Murphey, Dr. Mary Brandt, and Dr. Bich-May Nguyen (the Individual Amici). The Association Amici are associations of medical professionals committed to science-based provision of medical care to improve health outcomes. The Individual Amici are physicians working tirelessly to provide science-based medical care and are on the front lines of the research and clinical care needed to weather this crisis. All are concerned that the failure to protect voting rights and health outcomes would be disastrous for the health of our democracy and its citizens.

¹ No fees were paid or collected in the filing of this brief by any party or Amici.

STATEMENT OF THE ISSUES PRESENTED

- I. Disability in the Texas Election Code is broad enough to include persons in fear of contracting the Coronavirus.
 - A. Article VI, Section 2 of the Texas Constitution informs the interpretation of the Texas Election Code.
 - B. Condition is not defined by the Texas Election Code but surely must include the risk of serious illness or death attendant upon a pandemic.
 1. The Centers for Disease Control lists seven conditions which increase the risk of contracting the Coronavirus.
 2. The Texas Department of State Health Services concurs that certain persons are at a greater risk of contracting the Coronavirus.
- II. The Court should appoint a Special Master to provide the Court with competent, expert advice concerning the novel coronavirus and issues related to it.

ARGUMENT

In a pandemic, everyone is at risk. The question before this Court is whether or not Texas Statutes and Constitution compel its citizens to risk serious illness or death in order to exercise their fundamental right to vote. As will be shown, it obviously does not. Further, any argument that the Court should reach this result in the face of both our laws and our common sense cannot be credibly maintained. The Court should reject the Attorney General's request for the issuance of a writ.

I. DISABILITY IN THE TEXAS ELECTION CODE IS BROAD ENOUGH TO INCLUDE PERSONS IN FEAR OF CONTRACTING THE CORONAVIRUS.

Despite the arguments advanced by Texas Attorney General, the disability referenced in the Texas Election Code is already broad enough to encompass fear of contracting the Coronavirus. The Texas Legislature allows a voter to vote by mail if the voter is absent from the county of residence, disabled, 65 years of age or older, or confined in jail. Tex. Elec. Code. § 82.001, et seq. Under the disability eligibility criteria, 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...injuring the voter's health.” Tex. Elec. Code § 82.002(a). Neither “disability,” “sickness,” nor “physical condition” are defined terms in the Code. Tex. Elec. Code § 1.005. Texas Courts, therefore, have wide latitude in determining their meaning. It goes without saying that in the face of

a global health crisis, Texas Courts should use this latitude to protect the health and safety of the citizens. Happily, the Court does not have to make this interpretative decision in a vacuum.

A. *Article VI, Section 2 of the Texas Constitution informs the interpretation of the Texas Election Code.*

Article VI, Section 2 of the Texas Constitution informs the interpretation of the Texas Election Code. The Texas Constitution is the supreme law of Texas. *Eichelberger v. Eichelberger*, 582 S.W.2d 395, 397 (Tex. 1979) Legislation, therefore, is presumed to comport with the Texas Constitution as it would otherwise be unconstitutional. With respect to voting, the Texas Constitution is clear. “The privilege of free suffrage shall be protected by laws regulating elections...” Tex. Const. art. VI, § 2(c). That is to say, all laws regarding voting must be interpreted in light of the clear constitutional command that ‘free suffrage shall be protected.’ *Id.* No reasonable argument can understand this command to be evinced by the position advanced by the Attorney General. It cannot be said that an interpretation of the statute that requires citizens to run the risk of serious illness or death to exercise their fundamental right to vote complies with the Texas Constitution. The Court must surely reject the Attorney General’s cramped and unconstitutional view of the Elections Code.

B. *Condition is not defined by the Texas Election Code but surely must include the risk of serious illness or death attendant upon a pandemic.*

We are unquestionably in the midst of a serious global health crisis that has caused disruption to normal operations. Texas is not immune from this. The Governor has issued a series of Executive Orders to deal with the crisis at hand. *See generally*, Executive Order 08, Mitigating Covid-19 Spread. This Court has likewise issued Emergency Orders to deal with the crisis. *See generally*, First through Fourteenth Emergency Orders. While “condition” is not defined by the Texas Election Code, it surely must include the risk of serious illness or death attendant upon a pandemic. The Centers for Disease Control and Prevention (CDC) and the Texas Department of State Health Services have both issued guidance regarding preventing the spread of the disease.

1. The Centers for Disease Control lists seven conditions which increase the risk of contracting the Coronavirus.

While everyone is susceptible to contracting the Coronavirus, certain persons have a higher risk than others. The CDC has defined “High Risk Conditions” for developing severe illness from COVID-19. Those physical medical conditions are listed as:

1. Chronic lung disease or moderate to severe asthma,
2. Serious heart conditions,
3. Conditions compromising the immune system (the CDC notes that there are many conditions that can cause a person to be immunocompromised including, for example, cancer treatment, smoking, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and prolonged use of corticosteroids and other immune weakening medications),
4. Severe obesity (body mass index of 40 or higher),
5. Diabetes,

6. Chronic kidney disease undergoing dialysis,
7. Liver disease.

Centers for Disease Control and Prevention, *Information for Healthcare Professionals: COVID-19 and Underlying Conditions*, April 6, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/underlying-conditions.html>; and see the Declaration of Amici Dr. Dona Murphey attached as Exhibit A. Recently, the CDC has expanded the categories of persons with high risk. Persons with “hypertension or hemoglobin disorders such as sickle cell disease and thalassemia are included as being at higher risk.” Centers for Disease Control and Prevention, *Groups at Higher Risk for Severe Illness*, Last updated May 14, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>, and see the Declarations of Amici Dr. Dona Murphey and Dr. May Nguyen attached as Exhibits A and B. This position is in accord with emerging medical research.

According to a recent meta-analysis of thirteen studies, conditions that greatly affect the prognosis of COVID-19 include hypertension as well as many of those commonly listed as risk factors. Zheng Z, Peng F, Xu B, et al. Risk factors of critical & mortal COVID-19 cases: A systematic literature review and meta-analysis [published online ahead of print, 2020 Apr 23]. *J Infect.* 2020; S0163-4453(20)30234-6.

doi:10.1016/j.jinf.2020.04.021 https://pubmed.ncbi.nlm.nih.gov/32335169/?from_t

erm=covid-19+risk+factors&from_pos=2. The CDC recommends the continued implementation of social distancing and reducing crowd sizes to assist in mitigating these problems.

Dr. Varon has noted in his Declaration which is attached that there is no accepted way to test immunity, and having individuals appear at polling places will place them at greater risk of harming their health. Exhibit C, Declaration of Dr. Joseph Varon. As Dr. Murphey notes, there is at least one study of the recent Wisconsin election that suggests individuals voting in this pandemic have an increased likelihood of testing positive for the virus and this increases with the turnout at the particular voting site. Exhibit A. According to Dr. Varon, African Americans both because of the underlying conditions but even apart from them are at high risk of developing the disease under such circumstances. Exhibit C. Dr. Varon personally treats a number of Covid-19 patients. *Id.* Further it is vital to note that community spread would then occur after the voter returns home to their families, to work, or the commercial marketplace.

Dr. Varon maintains that any Texas voter who seeks classification as disabled would be doing so in good faith based on what is occurring in the pandemic. *Id.* Dr. Murphey, Varon and Nguyen all say that age is not a defining factor and Murphey and Nguyen both indicate that younger persons are indeed at significant risk as well. Exhibit A, B, and C. Dr. Murphey notes that Texas is not in a position to handle

a serious outbreak as it has dedicated insufficient funding for this and does not have the plan to handle such an outbreak. Exhibit A. Texans with these conditions face a risk that is unacceptably high to exercise the franchise that the Texas Constitution affords them.

2. The Texas Department of State Health Services concurs that certain persons are at a greater risk of contracting the corona virus.

The Texas Department of State Health Services concurs that certain persons are at a greater risk of contracting the corona virus. The Department recently tweeted “Some folks are at higher risk of getting very sick from coronavirus, including people 65 years or older and those with underlying health conditions such as heart disease, diabetes, cancer or a weakened immune system. Be extra careful. <https://dshs.texas.gov/coronavirus>.” Twitter, <https://twitter.com/texasdshs/status/1255920501102465024?s=11>. Because the official organs of the State of Texas have already acknowledged that at least certain groups are at a greater risk for contracting the Coronavirus, it is imperative that the Court consider these positions in determining its authoritative interpretation of the statute.

3. The lack of standards to determine who is or is not immune from the novel coronavirus makes it imperative that the Court acknowledge that it constitutes a ‘condition’ within the meaning of the statute.

The lack of standards to determine who is or is not immune from the novel coronavirus makes it imperative that the Court acknowledge that it constitutes a ‘condition’ within the meaning of the statute. Only those who are immune to Coronavirus could safely vote in person without risk of injuring their health. Standards for determining immunity for novel coronavirus have not been determined and agreed upon by the medical community. It remains unclear whether immunity develops at all or if so for how long. Commonly used tests to determine if a patient has Coronavirus have been called into question. The Federal Drug Administration has launched an investigation into the accuracy of the tests after a New York University study found a false negative rate as high as 50%. “FDA Probes Accuracy Issue with Abbott’s Rapid Coronavirus Test,” The Los Angeles Times, May 15, 2020, <https://www.latimes.com/science/story/2020-05-15/fda-probes-accuracy-issue-with-abbotts-rapid-coronavirus-test>. Antibody tests are similarly unreliable. Brennan, Zachary and David Lim, “FDA Pushed Through Scores of Inaccurate Antibody Tests without Agency Review,” Politico, April 27, 2020, <https://www.politico.com/news/2020/04/27/reliable-antibody-tests-coronavirus-207589>. It is impossible to accurately determine who is or is not immune from the novel coronavirus. The risk of infection coupled with the inability to adequately and accurately ascertain immunity constitutes a condition within the meaning of the statute, particularly in the context of Article VI of the Texas Constitution, and its

guarantee of the protection of free suffrage by laws regulating elections. Tex. Const. art. VI, § 2(c). Without standards to determine immunity, all Texans risk injury to their health by voting in person

C. The failure to acknowledge that the statute permits voters fearing Coronavirus infection to vote by mail is a real threat to public health.

The failure to acknowledge that the statute permits voters fearing the Coronavirus infection to vote by mail is a real threat to public health. The Declaration of Dr. Joseph Varon makes it abundantly clear that any request by a voter during this pandemic should be considered to be in good faith. Attached as Exhibit C. The medical consensus is clear, serious and sustained efforts must be taken in order to prevent the continued spread of the coronavirus. According to the Federal Government, “[l]arge events and mass gatherings can contribute to the spread of COVID-19 in the United States...” Center for Disease Control and Prevention, “Get Your Mass Gatherings or Large Community Events Ready,” Last updated May 19, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/large-events/mass-gatherings-ready-for-covid-19.html>. While it is indisputable that voting rights must not be abridged in the conduct of upcoming elections, every effort must be made to ensure such elections are as safe as can be.

This is not only Amici’s position, it is the position of the Texas Secretary of State. On April 2, 2020, the Secretary of State issued Election Advisory NO. 2020-14. This advisory was titled “COVID-19 (Coronavirus) Voting and Election

Procedures.” It specifically refers to Voting by Mail and references the Election Code’s use of the term “disability.” This advisory is specifically designed to ensure that Texas citizens are protected and is designed to maximize such protection. All three individual Amici agree with this position. *See* Exhibits A, B, and C.

Again, the State of Texas and the Federal Government are in accord. The CDC has issued guidance which encourages “voters to use voting methods that minimize direct contact with other people and reduce crowd size at polling stations.” Center for Disease Control and Prevention, *Recommendations for Election Polling Locations*, March 27, 2020. <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>. The guidance further goes on to “[e]ncourage mail-in methods of voting if allowed in the jurisdiction.” *Id.* All of this is in service of preventing community spread of the virus as was seen in Wisconsin after their elections. To the extent that at least 70 people are thought to have contracted the Coronavirus while voting in Wisconsin, it is necessary to prevent this endangerment of citizens from reoccurring in Texas.

Reports from Wisconsin include the following: “A study released Monday by economists at the University of Wisconsin-Oshkosh and Ball State University suggests that in-person voting may have led to a “large” increase in the rate of positive coronavirus tests weeks later.” Milwaukee Journal Sentinel, May 19, 2020. *Questions linger as new research suggests election was linked to rise in coronavirus*

case. <https://www.jsonline.com/story/news/2020/05/18/research-suggests-election-linked-coronavirus-rise-questions-linger/5199181002/>. The voters of the State of Texas have every reason to expect not to have to face these known harms.

II. THE COURT SHOULD APPOINT A SPECIAL MASTER TO PROVIDE THE COURT WITH COMPETENT, EXPERT ADVICE CONCERNING THE NOVEL CORONAVIRUS AND ISSUES RELATED TO IT.

The Court should appoint a Special Master to provide the Court with competent, expert advice concerning the novel coronavirus and issues related to it. The Coronavirus presents a nearly unprecedented challenge to the administration of justice in the State of Texas. Not since the Great Depression has such a time of peril afflicted Texas Courts. In Texas, at least, our courts are often cognizant of the limits of their expertise. This is one such time. This Court should use this opportunity to appoint a Special Master or some other such position to provide the Court with high quality, expert advice regarding the current case and other novel issues presented by the Coronavirus. Dr. Varon makes clear what the stakes are and how complicated the issues before the Court are. In relevant part he states:

“Currently there is no vaccine and no guarantee that the health resources available could save every voter who will contract COVID19. It’s much better to prevent disease acquisition than to try to treat increasing numbers of disease victims.

Even if an individual voter already had symptoms, or improved, or tested positive and then tested negative, there is a likelihood of injuring their health if they appear at the polls on election day. There is a significant risk of reinfection, clinical worsening, and even death.

COVID19 is a very fluid illness. It changes day by day. Clinicians must adapt, change their diagnostic and therapeutically interventions on a frequent basis as new information emerges.” Exhibit C.

Dr. Varon believes strongly that “**Any Texas voter checking the disabled box**, seeking a ballot my mail -- in these times and until, at least, we have this pandemic under much better control (we clearly do NOT have good control of this pandemic in Texas)--**would certainly be acting reasonably and in good faith.**” Exhibit C(emphasis added).

This is not an issue affecting just Democrats or Republicans, but a pandemic that threatens us all. When individuals are exposed to the Coronavirus at the polls, they leave the voting booths and return to their communities and cause community spread. Republicans and Democrats encounter each other in close proximity every day as do rich and poor or people with and without pre-existing conditions.

CONCLUSION

If America is to be the ‘shining city on a hill’ of Ronald Reagan’s conception, Texas must lead the way. Texans exercise their constitutional right to participate in forming the greatest society in the history of the world only by participating in the franchise. This Court should decline the Attorney General’s invitation to make this participation a life or death exercise. Amici urge this Court to reject the Attorney General’s request for a Writ and consign those unconstitutional views to the dustbin of history.

Dated this 20th day of May, 2020.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I **HEREBY CERTIFY** that Microsoft Word Reports that this document contains 3437 words, excluding the portions of the document exempted by Rule 9.4(i)(1).

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Exhibit A

No. 20-0401

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

UNSWORN DECLARATION OF Dona Kim Murphey, MD PhD

[declaration of facts]

State of Texas

County of Brazoria

My name is Dona Kim Murphey, MD PhD, my date of birth is [REDACTED], and my address is

[REDACTED] USA. I declare under penalty of perjury that the

foregoing is true and correct. Executed in Brazoria County, State of Texas, on the 19th day of

May 2020.



Declarant

DONA KIM MURPHEY, MD PhD

I am a practicing physician and scientist who is a national Board Member of Doctors for America. Doctors for America (DFA) is a national organization of physicians and medical students dedicated to help make more medical care available to those who are without it. It is the position of DFA that the COVID-19 pandemic *“lays bare ways that our health system, public health preparedness, and social safety net have fallen dramatically short, exacerbating circumstances for those who are already vulnerable or being treated inequitably. From urgent public health measures to long-term health system reforms; from protections for voting to protections for those in detention; from health worker safety to broader action to address many other inequities in our nation, **advocating for the health of our patients is an intersectional effort.**”* DFA’s areas of advocacy during this time include *“protections for access to voting – including the institution of widespread vote-by-mail - and fighting voter suppression so that our patients can continue having a voice in who represents them and their health needs.”*

Through DFA and independently, I have been deeply involved in educating the public, organizing community action, and generally advocating around COVID-19 since February of 2020. I have recently published two back to back opinion editorials with colleagues this past week in the Houston Chronicle (1) and the Dallas Morning News (2),

The Consequences of a Narrow Construction of Chapter 82 of the Election Code and its provision for voting by disabled voters

There are many Texans who suffer from pre-existing conditions that place them at risk of severe outcomes and death with COVID-19 according to both the Center for Disease Control (3) and the Texas Department of State Health Services. Other than age the pre-existing conditions include the following:

- a. Chronic lung disease
- b. Moderate or severe asthma
- c. People with serious heart conditions
- d. Individuals who are immunocompromised (such as those receiving treatment for cancer, who smoke or have received transplants of bone marrow or organs, persons with controlled HIV or AIDS or those who have engaged in the prolonged use of corticosteroids and other immune weakening medications)
- e. People with severe obesity
- f. People with diabetes
- g. Persons with chronic kidney disease undergoing dialysis
- h. People with liver disease.

Looking at the available medical data both nationally and specifically relating to Texas, it is clear that a significant percentage of Texans suffer from one or more of these conditions. Those affected would include Texans of all races and would number in the millions if not tens of millions. Just yesterday the Texas Department of State Health Services tweeted out the following:

“Some folks are at higher risk of getting very sick from coronavirus, including people 65 or older and those with underlying health conditions such as heart disease, Diabetes, cancer or a weakened immune system. Be extra careful.
Dshs.texas.gov/coronavirus”

Our state health department indicates that any one of these conditions render one vulnerable to severe COVID-19 disease. Given the strong correlation with hypertension as evidenced by the medical literature (4), I would also include hypertension. A third of all adult Texans have hypertension (5). SARS-CoV-2, the virus that causes COVID-19 can be aerosolized and survives suspended in air or on surfaces for hours to days (6). To ensure the health of all prospective voters, given the inherent risk of in person voting in high traffic, large volume venues, a universal mail-in-ballot strategy is the only strategy for safe elections. The Morbidity and Mortality Weekly Report from the CDC on May 19, 2020 released data that demonstrates again (corroborating findings from multiple other indoor gatherings) that a group of 92 attendees to an Arkansas Church became infected with SARS-CoV-2. The highest attack rate in this group was 59 percent for those between 19 and 64. This data is consistent with the medical literature in illustrating that the virus will definitely attack those who are under 65 and not therefore eligible for the automatic issuance of an absentee ballot.

In Wisconsin, the move to require in person voting correlated with higher COVID-19 infections. Economists Chris Cotti and Bryan Engelhardt of the University of Wisconsin in Oshkosh, reportedly found:

Counties with higher voter density—in other words, a higher number of people who voted at each polling place—later saw a higher rate of positive coronavirus tests. Specifically, a 10 percent increase in the number of voters per polling place corresponded to a roughly 17% higher rate of positive coronavirus tests in that county two and three weeks later, after the coronavirus incubation period had passed.

This involved a much smaller state and a primary election, with lower turnout than a general election. The implications for high traffic, large volume venues in November 2020 are more profound.

I have familiarized myself with Section 82.002(a) of the Texas Election Code. I read the statute to express Legislative concern about injury to the voter’s health, and am viewing it both as it might normally be applied and as to the facts as I understand them in the current pandemic. The provision says in appropriate part, that a person would qualify for the issuance of an absentee ballot if "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." In this case, the concern is about injury to health given underlying risk and the pandemic. Each of those persons in the categories above would be at risk of severe illness or death from COVID-19 if they are required to vote in person rather than being able to vote absentee. The general population also remains at considerable risk, with a case fatality rate at least ten times that of the seasonal flu. The vast majority of the US population still remains naïve

to this virus and immunity after infection is still a mystery. A testing strategy to inform resumption of social activities such as voting would itself be deeply misleading given the lack of clinical validation and poor accuracy of rapid nucleic assay (7), PCR (8), and antibody (9) diagnostics.

What happens if we allow Texans to vote in person, facilitating mass COVID-19 infections? Texas has among the lowest public health emergency preparedness (PHEP) funding per capita in the nation, ranking 48th among the 50 states (10). We have the highest share of residents without health insurance coverage, ranking last among the group of 51. In serial evaluations of the states for their handling of the SARS-CoV-2 exposures in March and April, Texas has ranked 49th, 39th and 42nd. 15% of those infected require hospitalization, and a third of those hospitalized required ICU care. Beyond the tremendous cost to human health and life, we are not in a position to handle the projected increases in infections from large in-person voting.

From the public health perspective, there is no space for argument. EVERY Texan should qualify for a disability exemption for in person voting given the enormous risk to our lives in gathering publicly without all systems and practices in place advanced by a broad consensus of physicians, scientists and public health officials (11). Testing, while now much more abundant than it was, is not strategically targeted given the populations we know to be at greatest risk. Contact tracing is virtually nonexistent in the state of Texas, still. Given the election statute, the current context of this pandemic, and our lack of preparation to deal with the consequences of an enormous COVID-19 outbreak in the state of Texas, at the very least those with pre-existing conditions as described here should be eligible to vote by mail.

(1) <https://www.houstonchronicle.com/opinion/outlook/article/Opinion-Do-not-allow-gatherings-in-Texas-without-15268190.php>

(2) <https://www.dallasnews.com/opinion/commentary/2020/05/17/as-texas-re-opens-its-crucial-to-ramp-up-testing-and-contact-tracing/>

(3) <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>

(4) https://pubmed.ncbi.nlm.nih.gov/32335169/?from_term=covid-19+risk+factors&from_pos=2

(5) <https://www.americashealthrankings.org/explore/annual/measure/Hypertension/state/TX>

(6) <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>

(7) <https://www.latimes.com/science/story/2020-05-15/fda-probes-accuracy-issue-with-abbotts-rapid-coronavirus-test>

(8) <https://thehill.com/changing-america/well-being/prevention-cures/496651-false-positive-and-false-negative-coronavirus>

(9) <https://www.politico.com/news/2020/04/27/reliable-antibody-tests-coronavirus-207589>

(10) <https://wallethub.com/edu/most-aggressive-states-against-coronavirus/72307/#main-findings>

(11) <https://www.pbs.org/newshour/show/how-this-bipartisan-plan-proposes-scaling-up-contact-tracing>

Exhibit B

No. 20-0401

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

UNSWORN DECLARATION OF BICH-MAY NGUYEN, MD, MPH, FAAFP

[declaration of facts]

State of Texas

County of Harris

My name is Bich-May Nguyen, MD, MPH, FAAFP, my date of birth is [REDACTED] and my address is [REDACTED]. I declare under penalty of perjury that the foregoing is true and correct. Executed in Harris County, State of Texas, on the 19th day of May 2020.

Bich-May Nguyen

Declarant

BICH-MAY NGUYEN, MD, MPH, FAAFP

I am a family physician, educator, and research director at a community-based family medicine residency program in the Greater Houston area and I serve on the board of Doctors for America. As a family physician with training in public health, I believe that until we have a vaccine for this novel coronavirus, everyone is at risk of contracting the disease and becoming severely ill. While early reports out of Italy and New York City highlighted that people with hypertension, obesity, immunocompromising conditions, or were over 65 years old were at risk of severe illness, more recent reports have shown that adults in their 30s-40s with few or no risk factors are having strokes related to the infection. Because we are all learning about the short- and long-term effects of this new infectious disease and I have experience as a poll worker, I believe the safest way for people to vote would be by mail accessible to all registered voters.

Exhibit C

No. 20-0401

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

UNSWORN DECLARATION OF JOSEPH VARON, MD

[declaration of facts]

State of Texas

County of Harris

My name is Joseph Varon, MD, my date of birth is [REDACTED], and my address is [REDACTED]

[REDACTED]. I declare under penalty of perjury that the foregoing is

true and correct. Executed in Harris County, State of Texas, on the 18th day of May 2020.

JOSEPH VARON, MD, FACP FCCP, FCCM, FRSM

I am a physician, practicing medicine in Houston, Harris County, Texas. My Board Certifications, Diplomates and other specialty history is placed at the end of this Declaration. I am the Chairman of the Board of United General Hospital, Chief of Staff, Chief of Critical Care at United Memorial Medical Center and United General Hospital in Houston, Professor of Medicine, Surgery and Professor of Emergency Medicine at several universities in Mexico, the Middle East and Europe. I served in fellowships in critical care medicine and pulmonary diseases at Baylor College of Medicine in Houston. I've contributed more than 790 peer-reviewed journal articles, 10 full textbooks, 15 dozen book chapters to the medical literature, am a reviewer for multiple journals, serve as Editor-in-Chief for Critical Care and Shock and Current Respiratory Medicine Reviews, and am recognized for groundbreaking contributions to Critical Care Medicine in cardiopulmonary resuscitation and therapeutic hypothermia, conducting studies and developing technology for selective brain cooling, as an expert in hypertensive crises management. With Dr. Carlos Ayus, I co-described hyponatremia associated to extreme exercise syndrome, and with Mr. James Boston co-described the healthcare provider anxiety syndrome also known as the Boston-Varon syndrome. I've lectured in over 58 different countries around the globe. Professor Luc Montagnier (Nobel Prize Winner for Medicine in 2008) and I created the Medical Prevention and Research Institute in Houston, Texas, where we've conducted work on basic science projects.

I am an expert in Novel Coronavirus19, and spent many months in intense reading, study and preparation for what I anticipated would become and which became the worst pandemic I've ever seen. I have treated, counseled and followed several hundreds of patients who have tested positive for this virus. I have treated in my ICU dozens of critically ill COVID19 positive patients. I have overseen testing for more than 33,000 persons for this malady.

I am one of a worldwide, frontline COVID19 critical care working group.
www.COVID19criticalcare.com

Currently I am devoting significant time to coronavirus patients in my ICU. I am treating many patients with this terrible malady, including patients of all ages. The majority of the 33,000 people we have tested who are positive are young people (19- 54 years of age). Of my patients who are COVID19 positive who require admission to the hospital, 80 percent are people of color.

In my current practice I have seen dozens of such young victims with life-threatening conditions such as clots in their lungs, acute strokes and heart attacks. This disease is a killer.

When a voter is deciding whether to physically expose themselves to these risks by voting they should understand the lethal potential of the disease.

I know the toll it takes on a patient and the entire massive community surrounding the patient to try to save them, and the extraordinary resources devoted to each case, each special person, each with loved ones all focusing on the survival of their friend and family member.

I have devoted my entire professional and personal time to the care of these critically ill patients. My cutting-edge, therapeutic interventions have been implemented in institutions across the world. In our

ICU, we faithfully implement these practices, resulting in a to-date mortality rate of zero. This requires massive resources unavailable to most people in Texas.

May 14th 2020: A look inside a Houston coronavirus unit: Dr. Joseph Varon is fighting COVID-19 as Texas reopens and admissions increase. Los Angeles Times

<https://youtu.be/UK0V0FpnBxM>

I am asking the court to please take specific regard for the physical condition of the voting population of Texas. Texas voters living in the state — as with all people here — have a physical condition that prevents them from appearing at a polling place on election day without a likelihood of injuring their own health.

I would advise every voter to stay away from the polls and vote by mail, for their own safety; no one can be safely said to be immune at this time.

I'm respectfully asking the Court to please consider the health and well-being of Texas voters who — for the present time and, until the pandemic is under control, --- are in reasonable medical probability facing a likelihood of injuring their health, if they appear at a polling place on Election Day, instead of casting a ballot by mail. There is a likelihood of injuring their own health at an open polling place where people congregate, even with all, good faith attempts to control massing, Such congregation of people, where it can be avoided, must be avoided for the time being. Thus, all Texans do indeed have a physical condition constituting a “disability;” they are not immune to coronavirus. Rather, they are quite vulnerable to it.

Currently there is no vaccine and no guarantee that the health resources available could save every voter who will contract COVID19. It's much better to prevent disease acquisition than to try to treat increasing numbers of disease victims.

Even if an individual voter already had symptoms, or improved, or tested positive and then tested negative, there is a likelihood of injuring their health if they appear at the polls on election day. There is a significant risk of reinfection, clinical worsening, and even death.

COVID19 is a very fluid illness. It changes day by day. Clinicians must adapt, change their diagnostic and therapeutically interventions on a frequent basis as new information emerges. No reasonable and prudent person could guarantee that there would not be contagion of Texas voters at the polling stations, and therefore at risk by virtue of their presence.

Any Texas voter checking the disabled box, seeking a ballot my mail -- in these times and until, at least, we have this pandemic under much better control (we clearly do NOT have good control of this pandemic in Texas)--would certainly be acting reasonably and in good faith.

In the upcoming months, we can anticipate a spike of new COVID19 cases.

A vaccine or any type of immunity is far away. It is nearly impossible that the current, physical condition of all Texas voters will change from their condition of a likelihood of injuring their health by voting in person to a physical condition of “immunity” in the next two years

As a matter of health care policy and protection, sending our fellow Texans to the polls instead of allowing a mail in ballot also is a threat to the public health and the safety of the children and families and others to whom these voters could spread the disease, taxing already scarce resources.

The danger to voters' health is great.

The danger to people of color is even greater than to the remainder of the population. People of color, regardless of whether they have preexisting medical conditions or not, are at an exceedingly high risk for development of lethal COVID19 infection complications.

The nature of the virus and its prevalence in Texas has made application of the law racially discriminatory as a matter of fact.

Thus, there is a true likelihood of danger to the health of everyone appearing at the polls on election day, injuring each voters' health.

By exposing voters of color to the polls and requiring their presence in lieu of ballot by mail, the State is greatly increasing the chances that more people of color will be injured. This is far more than "a likelihood." The nature of the virus and its prevalence in Texas has made application of a requirement to show up at the polls racially discriminatory, as a matter of fact.

My credentials include: 1991 Diplomate of the American Board of Internal Medicine.
Board Certified.

1992 Fellow of the American College of Angiology (F.A.C.A.)

1996 Diplomate of the American Board of Internal Medicine, Pulmonary Diseases
Subspecialty (1996-2006)

1996 Fellow of the American College of Physicians (F.A.C.P.)

1997 Fellow of the American College of Chest Physicians (F.C.C.P.)

1997 Diplomate of the American Board of Internal Medicine, Critical Care
Medicine Subspecialty (1997-2007)

1998 Fellow of the American College of Critical Care Medicine (F.C.C.M.)

2005: Diplomate of The American Board of Geriatrics
Certificate Number A5-19604

2005: Fellow of The American College of Geriatrics Specialists (F.A.C.G.S.)

2007: Diplomate of the American Board of Internal Medicine, Pulmonary Diseases
Subspecialty (2007-2017). Re-Certified.

2007: Diplomate of the American Board of Internal Medicine, Critical Care Medicine
Subspecialty (2007-2017). Re-Certified.

2013: Fellow of the Royal Society of Medicine (F.R.S.M.) London, United Kingdom.

2017: Diplomate of the National Board of Physicians and Surgeons in Internal Medicine,
Critical Care Medicine and Pulmonary Disease. (Certificate No. 005885)

1996-to-date: American College of Physicians, Fellow.

- 1997-to-date: American College of Chest Physicians, Fellow.

- 1997-to-date: HispanoAmerican Biomedical Association, Member.

- 1997-to-date: Asociación Latinoamericana del Tórax, Member.

- 1998-to-date: Society of Critical Care Medicine, Fellow.

- 2004-to-date: American Academy of Sleep Medicine, Member.

- 2005-to-date: European Resuscitation Council, Member.

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Associated Case Party: Remi Garza

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Associated Case Party: Remi Garza

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