



October 14, 2020

Supreme Court of Texas  
Supreme Court Building  
201 W 14th St., Room 104  
Austin, Texas 78711

RE: *In Re Juan Gerardo Perez Pichardo and Public Interest Legal Foundation, Inc.*, No. 20-0800

TO THE HONORABLE SUPREME COURT OF TEXAS:

The Texas Public Policy Foundation (the “Foundation”) submits this *amicus curiae* letter brief in support of review of the Relator’s Petition for a Writ of Mandamus to command Respondent Harris County Voter Registrar Ann Harris Bennett to adhere to the statutory requirements of the Texas Election Code, Tex. Elec. Code § 13.001 et seq., that sets out the eligibility for registration for voting and voting to United States citizens and that the Registrar is required by law to disapprove applications for voter registration that do not contain a “YES” answer to the question “Are you a United States citizen?” and to disapprove those applications either containing a “NO” answer or do not contain an answer at all.

The Texas Public Policy Foundation (the “Foundation”) is a non-profit, non-partisan research organization dedicated to promoting liberty, personal responsibility, and free enterprise through academically-sound research and outreach. Since its inception in 1989, the Foundation has conducted rigorous investigations on the role that a fair and comprehensible policy plays in the preservation of limited government. More recently, the Foundation, through its Election Protection Project led by the Honorable Francisco “Quico” Canseco, has placed a renewed emphasis on ensuring that each and every citizen is afforded their rights and that public policy secures the reliability of our election system. The Project focuses on educating the public about ballot safety through these general principles: (1) voters should understand their rights and the rules of voting; (2) voters

should be free to choose; and (3) the voting system should preserve the integrity of each ballot. From that research, and in accordance with its central mission, the Foundation has hosted policy discussions and prepared advisory papers all aimed at making Texas' elections in conformance with constitutional principles of fairness and democracy. The Foundation has paid all costs and fees incurred in the preparation of this brief.

## **I. UNITED STATES CONSTITUTIONAL PROTECTION OF A CITIZEN'S VOTE.**

The right to vote is "a fundamental political right. It is preservative of all rights. *Dunn v. Blumstein*, 405 U.S. 330, 336 (1972) (quoting *Reynolds v. Sims*, 377 U.S. 533, 562 (1964)); There can be no dispute that the right to vote is a constitutionally protected fundamental right." *See Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966) ("The right to vote is too precious, too fundamental"). "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S.1, (1964).

The Constitution allows states to "prescribe the Times, Places and Manner of holding Elections for Senators and Representatives, and the Courts therefore have recognized that States retain the power to regulate their own elections." *Burdick v. Takushi*, 504 U.S. 428, 433 (1992) (quoting U.S. Const. art. I, § 4, cl. 1). These regulations can help protect the right to vote by ensuring that elections are "fair and honest" and that "some sort of order, rather than chaos, . . . accompanies the democratic processes." *Id.* (quoting *Storer v. Brown*, 415 U.S. 724 (10th Cir. 2000); *see Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997) ("States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election-and campaign-related disorder.")). Thus, The State of Texas enacted its election laws requiring that in order to qualify to register to vote, to appear on the voter rolls and to vote, one must be a citizen of the United States. Tex. Elec. Code § 13.001, et. seq.

Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." *Purcell v. Gonzales*, 549 U.S. 1, 4 (2006). Such confidence is vital because "voter fraud drives honest citizens out of the democratic process and breeds distrust of our government." Voters "will feel disenfranchised" when they have reason to "fear their legitimate votes will be

outweighed by fraudulent ones." *Id.* Thus, the U.S. Supreme Court has recognized that "public confidence in the integrity of the electoral process has independent significance because it encourages citizen participation in the democratic process." *Crawford v. Marion County Election Bd.*, 553 U.S. 181, 197 (2008) (plurality opinion of Stevens, J.). Thus, the State of Texas has a legitimate interest in safeguarding voter confidence. When laws of the state are not followed, and a county voter registrar allows registration forms to be accepted when the person registering states un-equivocally that he/she is not a citizen, then the confidence and the integrity of the vote and the election is to be in serious question.

We all, as citizens of the United States and of the State of Texas, hold the tenants of the Declaration of Independence as the philosophical basis for the Constitution. There it eloquently states that "that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed ... It is the right of the people to alter or to abolish it and to Institute new government." Thus, it is the power of the citizen that determines the course of government and that select those that govern. It is a right of citizenship and not the right of non-citizens to vote.

When States, through a state official, violate the legislative enacted laws and allows non-citizens to vote, not only is the confidence of the citizenry shaken with doubt, but more egregiously, that state official, ergo the state is in violation of the 14<sup>th</sup> Amendment of the U.S. Constitution. A citizen's rights, his privileges and immunities of citizenship have been abridged. The Citizen Voter's voice has been cancelled. It is here that the official County Voter Registrar must cull the submitted voter registration documents for statements of Citizenship, non-Citizen or no declaration of either. The Voter Registrar's failure to cull those not qualifying under Texas Election Code, to vote, is an act of the state which prejudices the rights of legitimate voters. This neglect opens the door, wide for vote harvesters to take the registration list of unqualified voters and vote their ballot, safely, by mail or other fraudulent means.

## **II. THE IMPORTANCE OF ENSUING FAIR ELECTIONS IN HARRIS COUNTY WARRANTS REVIEW.**

Harris County, Texas is estimated to have a population in excess of 4.7 million persons, representing approximately sixteen percent of the entire population of the

State of Texas.<sup>1</sup> Texans cannot trust the results of the upcoming November election without voting in Harris County being conducted with integrity that gives the public trust in the ultimate outcome. Unfortunately, the performance of Harris County election officials during 2020, has been, at best, chaotic, which threatens public trust in the outcome. Considering the totality of Harris County's performance during the 2020 election cycle warrants consideration of Realtors' mandamus petition.

For example, Harris County election administrators were ill-prepared to conduct the 2020 primary election.<sup>2</sup> Mismanagement by Harris County resulted in long lines and delays for Texans to cast their vote, which potentially disenfranchised thousands of voters.<sup>3</sup> Shortly thereafter, the Harris County Clerk, the primary official responsible for conducting elections in Harris County, resigned,<sup>4</sup> only to be replaced by a partisan activist.<sup>5</sup> Recently, it is reported that Harris County remains the largest county in the United States to lack a paper trail for voting machines.<sup>6</sup> And, this Court recently granted mandamus relief to stop Harris County's unlawful plan to send unsolicited mail ballots countywide.<sup>7</sup>

Realtors' mandamus petition represents yet another chapter in the sordid conduct of Harris County conducting its election duties by openly allowing persons unlawfully to be registered to vote where, presumably, those persons will be free to vote illegally. This Court must review and address.

## CONCLUSION

The right of citizens to vote and have their voice counted in an election is protected under the duly enacted laws of the State of Texas. These rights are also safeguarded by the United States Constitution. When a government official violates

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<sup>1</sup> <https://www.census.gov/quickfacts/harriscountytexas>

<sup>2</sup> <https://www.click2houston.com/decision-2020/2020/03/04/harris-county-clerk-blames-gop-for-refusing-to-allow-joint-primary-causing-long-wait-times-for-voters-on-super-tuesday/>

<sup>3</sup> <https://www.texastribune.org/2020/03/04/harris-countys-texas-southern-university-voting-delays-what-happened/>

<sup>4</sup> <https://www.houstonpublicmedia.org/articles/news/politics/2020/05/09/369169/harris-county-clerk-diane-trautman-resigns/>

<sup>5</sup> <https://www.houstonchronicle.com/politics/houston/article/Texas-Democratic-Party-official-appointed-interim-15282265.php>

<sup>6</sup> <https://www.houstonchronicle.com/news/houston-texas/houston/article/Harris-County-the-largest-in-U-S-still-voting-on-15617300.php>

<sup>7</sup> <https://abc13.com/mail-in-ballots-ballot-applications-texas-supreme-court-harris-county/6840790/>

the voting laws of the state, they deprive and violate a citizen's right. Allowing the unlawful registration of non-qualifying individuals to vote deprives a qualified individual the right to vote.

It is the duty of the state to act prudently and under the letter of the law. The law is there to protect and not violate the rights of its citizens.

Respectfully submitted,

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### **CERTIFICATE OF COMPLIANCE**

I hereby certify that this document complies with the typeface requirements of Tex. R. App. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of Tex. R. App. P. 9.4(i), because it contains 1,403 words, excluding any parts exempted by Tex. R. App. P. 9.4(i)(1).

/s/Robert Henneke

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## CERTIFICATE OF SERVICE

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