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December 11, 2020

## A little known clause of the Constitution has a huge bearing on the Texas election lawsuit

By James V. DeLong

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The papers filed by Texas and its allies in *Texas v. Pennsylvania* do not invoke the Guarantee Clause of the Constitution: "The United States shall guarantee to every state in this union a republican form of government" (Art IV, Sec. 4).

The clause has been mentioned rarely in Supreme Court jurisprudence and is usually consigned to the dead zone of "political questions," which means that

it is for the political branches, not the courts to decide what it means.

However, a group of legislators from Idaho, Alaska, and Arizona [filed an amicus brief](#) arguing that the clause should be invoked. Defining a "republican form of government" is no more difficult than many other issues the Court has taken on, and it can always piggyback on a 1947 statement by the Supreme Court of Texas that:

It is a fundamental idea in all republican forms of government that no one can be declared elected \* \* \*, unless he \* \* \* receives a majority or a plurality of the legal votes cast in the election.



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The clause is well suited to the present situation, in which:

As the facts alleged by the State of Texas demonstrate, the 2020 elections ... represent the antithesis of a republican form of government. An elite group of sitting Democrat officers in each of the Defendant States coordinated with the Democrat party to illegally and unconstitutionally change the rules established by the Legislatures in the Defendant States, thereby depriving the people of their states a free and fair election — the very basis of a republican form of government.

The Guarantee Clause places an obligation upon the United States to ensure that such an unlawful election not be carried to fruition. This Court is the sole forum available for the enforcement of that obligation under the circumstances faced by the nation today[.]

The idea is arresting. Given the lowly status of the Guarantee Clause, one can see why Texas would choose not to raise it, but it is a useful counter to the arguments made by the four defendants that whatever they choose to do in their elections, however corrupt, is no one else's business.

As the Guarantee Clause makes clear, state efforts to undermine republican government are indeed everyone's business.

*James V DeLong lives in the Shenandoah Valley of Virginia.*

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