

No. 22O155

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF TEXAS,
Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA, STATE OF GEORGIA, STATE OF
MICHIGAN, AND STATE OF WISCONSIN,
Defendants.

**MOTION FOR LEAVE (1) TO FILE BRIEF OF LIEUTENANT GOVERNOR
JANICE MCGEACHIN, SENATOR LORA REINBOLD, REPRESENTATIVE
DAVID EASTMAN, ET AL (ELECTED STATE OFFICIALS) AS *AMICI
CURIAE* IN SUPPORT OF PLAINTIFF, AND (2) TO DO SO IN AN
UNBOUND FORMAT ON 8 1/2-BY-11-INCH PAPER, AND (3) TO DO SO
WITHOUT TEN DAYS' ADVANCE NOTICE TO THE PARTIES**

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Movants, who are elected and sitting Senators and Representatives of the State of Alaska, State of Arizona, and State of Idaho, and the sitting Lieutenant Governor of the State of Idaho, and who share a commitment to preserving (1) the constitutional promise of a republican form of government and (2) honest elections, respectfully request leave of the Court (1) to file the attached *Amici Curiae* brief in support of Plaintiff State of Texas, (2) to file the brief in an unbound format on 8 1/2-by-11-inch paper, and (3) to file the brief without ten days' advance notice to the parties as ordinarily required by Sup. Ct. R. 37.2(a).

Positions of the Parties

Movants have requested consent of all parties¹ and have received the consent of Plaintiff State of Texas and Defendants State of Georgia and State of Wisconsin. Movants have not received replies from the other parties.

Interests of *Amici*; Summary of Brief

The proposed brief would bring to the Court's attention (1) the perspectives of State Senators, State Representatives, and a Lieutenant Governor of states disenfranchised by the unconstitutional actions, fraud, and other irregularities of the Defendant States, and (2) a perspective of *Article IV, Section 4*, of the *U.S. Constitution* not raised in Plaintiff's brief. *See Appendix A* for list of thirty-nine *Amici*.

¹ No counsel for any party authored the *Amici* brief in whole or in part and no person or entity other than *Amici* made a monetary contribution to its preparation or submission.

As set forth in the enclosed brief, the *Amici* elected officials have a strong interest in the outcome of Plaintiff's application to vacate or enjoin Defendant States from certifying their electors. Specifically, the *Amici* elected officials have a critical interest in ensuring that the electors from sister states represent the actual and honest vote of said sister states, so that an illegal election will not reach fruition and spoil the vote from the state they represent.

The *Amici* elected officials thus have a distinct perspective on the harms asserted by Plaintiff, and the *Amici* brief includes relevant material not brought to the attention of the Court by the parties that may be of considerable assistance to the Court. *See Sup. Ct. R. 37.1*. Specifically, the brief describes how *Article IV, Section 4* demands the requested relief in light of a myriad of evidence of election fraud.

The Guarantee Clause places an obligation upon the United States to ensure that such an illegal election not be carried to fruition. This Court is the only forum available to any state for the enforcement of (1) the obligation put forth by *Article 4, Section 4*, that the Union enjoy an actual republican form of government, and (2) the broader principle of fair and honest elections.

The *Amici* elected officials therefore seek leave to file this brief in order to support Plaintiff State of Texas' showing that there is no adequate remedy at law; that absent the requested relief the defendants will appoint electors based on

unconstitutional and deeply uncertain election results; and the U.S. House of Representatives will count those votes on January 6, tainting the election and casting into doubt the assurance of free elections in this country. Said more succinctly, Plaintiff will suffer serious and irreparable harm unless the injunctive relief herein requested, is granted.

Format and Timing of Filing

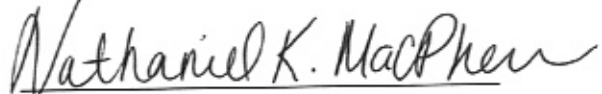
Plaintiff State of Texas filed its Motion for leave to file a bill of complaint on December 7, 2020. On the same day, Plaintiff filed a Motion to expedite consideration of said motion for leave. This Court ordered a Response be filed by December 10 at 3 p.m.

In light of the December 10 deadline, there was insufficient time for *Amici* to prepare their brief for printing and filing in booklet form, as ordinarily required by *Supreme Court Rule 33.1*. Nor, for the same reason, were *Amici* able to provide the parties with ten days' notice of their intent to file the attached brief, as ordinarily required by *Rule 37.2(a)*. But, *Amici* did, by e-mail, provide notice of their intent to file the brief to the parties on December 9, 2020. Plaintiff State of Texas and Defendants State of Georgia and State of Wisconsin did consent.

Conclusion

For the foregoing reasons, *Amici* respectfully request that this Court grant this motion to file the attached *Amici* brief and accept it in the format and at the time submitted.

Respectfully submitted.



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Lora Reinbold

ARIZONA

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Anthony Kern

David Livingston

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David Gowan

Kelly Townsend

IDAHO

Lt. Governor

Janice McGeachin

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Mary Souza

Steve Vick

Christy Zito

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IDENTITY AND INTEREST OF AMICI CURIAE

Amici Curiae are 39 elected and sitting members of the State Senates and Houses of Representatives of the State of Alaska, the State of Arizona, and the State of Idaho, and the Lieutenant Governor of the State of Idaho.¹ *See Appendix A* for the listing. *Amici* ask this Court to consider an important element of the *U.S. Constitutional* panorama not presented by the State of Texas: The *Guarantee Clause*.

In briefest summary, *Amici* submit that when one or more states cease to operate under a Republican form of Government, all states are denied the *Article IV, §4* guarantee of a Republican form of Government. In this instance, the reticence and failure of sister states to appropriately fulfill their constitutional duties with respect to a presidential election has materially injured the Republic shared by all states. Echoing a concern articulated in the *Federalist Papers*, a federal system comprised, like the Holy Roman Empire and Delphic Amphictyony, with incompatible power sources, power ideologies, and power structures cannot function cohesively.

SUMMARY OF THE ARGUMENT

Amici support and adopt the allegations asserted and the arguments made in the filings submitted by the State of Texas. The purpose of this brief is to address

¹ No counsel for any party authored the *Amici* brief in whole or in part and no person or entity other than *Amici* made a monetary contribution to its preparation or submission.

the application of the *Guarantee Clause* to the facts before this Court. It is an issue not raised by the State of Texas in its filings.

The *Guarantee Clause* directs the United States to “guarantee to every State in this Union a Republican Form of Government.” *U.S. Const., Art. IV, § 4*. The word “republic” derives from the Latin, *res publica*, meaning “the thing of the people.” As stated in *Federalist 57*: “The elective mode of obtaining rulers is the characteristic policy of republican government.” *Federalist 39* makes clear that the essential element of a republic is the appointment of the officers of the government by the great body of the people through a process based on rule of law.

As the facts alleged by the State of Texas demonstrate, the 2020 elections in Pennsylvania, Georgia, Michigan, and Wisconsin 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, and its consideration of Texas’ complaint on the merits is

compelled by precedent establishing the essential role that the federal courts, especially including this Court, play in protecting the republican processes by which our leaders are selected.

ARGUMENT

1. Elections and Voting Define a Republican Form of Government.

We respectfully submit that this Court has shunned enforcement of the *Article IV, §4 Guarantee Clause* because there has never been a *federal* goal or a *federal* definition. Herein we propose that this Court adopt a federal definition, originally adopted by the Supreme Court of Texas in 1947 (citing and construing *Article I, Section 2 of the Constitution of Texas*), which is entirely consistent with *Federalist 39*:

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.

Ramsey v. Dunlop, 205 S.W.2d 979, 981, 983, 146 Tex. 196, 199-200, 203 (1947).

Obviously, the Presidential election of 2020 poses nothing so squarely as this: whether Joseph Biden and Kamala Harris actually received a majority or a plurality of the *legal* votes cast in the election.

And yet the *Constitution, Art. II, §1*, squarely charges the states, and no one else, with evaluating the legality of votes or the selection of electors, which raises the question: can legislatures delegate their power to judge the qualifications of

their electors to others, or is this a non-delegable power? And if this power is delegable, are there any constitutional limits on the power of delegation?

This Court refused, 108 years ago, to strike down the idea of the initiative and referendum law in Oregon against the challenge that the legislature's delegation of power to the people themselves violated the *Guarantee Clause*. *Pacific States Telephone & Telegraph Co. v. State of Oregon*, 223 U.S. 118, 32 S.Ct. 224, 56 L.Ed. 377 (1912). The summary of the Court's holding on that occasion was that, whether a state has ceased to be republican in form within the guarantee of *U.S. Constitution, Article IV, §4*, because of its adoption of the initiative and referendum, was a political question solely for Congress. *Id.* at 151, 32 S.Ct. at 231.

As for a federal goal, we submit that the issues raised not only by *Pacific States Telephone & Telegraph Co.*, but by every other case in which the *Guarantee Clause* has been raised, pale by comparison with the issues raised by the presidential election of 2020. The fabled fate of “the traitor” Thomas Wilson Dorr in *Luther v. Borden*, 48 U.S. 1 (1849) concerned only the government and fate of the constitution of Rhode Island.

Pacific States Telephone & Telegraph Co. concerned only the single question of whether Oregon had abandoned a republican form of govern by adopting direct democracy—and in the past 108 years, the majority of states in the Union has adopted some form of initiative or referendum. Nat'l Council of State Legislatures,

<https://www.ncsl.org/research/elections-and-campaigns/initiative-and-referendum-processes.aspx>.

But now, in the election of 2020, the principal enunciated by the Texas Supreme Court in *Ramsey v. Dunlop* in 1947 is threatened, not by ill-defined precinct lines in Texas, but by credible allegations of cabal and oligarchy in the four Defendant states, which threaten the operation and integrity of the nationwide Republican Form of Government.

Specifically, Texas has alleged, and we the undersigned amici would join, in charging that “[a]n elite group of sitting Democrat officers in each of the Defendant States coordinated with the Democrat party” to subvert the Presidential Election of 2020 so as to deprive the majority of states of their lawful electoral power.

The question ultimately becomes one of delegation: to whom may states assign the power of evaluating the Presidential electors? While the *Constitution* of 1787 made no mention of and did not presume that the President would be elected by popular vote, the presumption of legal voting and majority rule, articulated in Texas’ decision in *Ramsey v. Dunlop* above, was implicit.

Where an oligarchy has taken power in certain states, to vitiate both legal voting and majority rule, this oligarchy has placed itself above all others, and the “cheating” states reign like the House of Lords used to in Mediaeval and Early Modern England.

2. Single-Stated Problems vs. Intended Interstate Interference

Political Question abstention from cases involving the Republican Form of Government (*Guarantee Clause*) make sense only in simple, one dimensional, single-state or single issue situations, which constitute the vast majority of cases brought before this court under the guise of *Article IV, §4*.

For felicitous historical reasons, complex, multidimensional, systemic problems which undermine the entire *Federal Constitution* have never before now come under *Article IV, §4* examination. Today that issue has arisen for the first time. The questions involve the life and death of the Republic, without even a single scintilla or tiny glimmer of exaggeration.

Never before in the history of the United States has a large series of states, representing the true majority of the American population, been forced, so directly and seriously, significantly, to challenge a minority of states with what amounts to an attempt to monopolize power by fraudulent manipulation of an election. We, the undersigned *Amici*, believe that this Court's consistent doctrine that *Guarantee Clause* cases lie beyond the framer's constitutional intent results from the doctrine of States' Rights—the principle of federalism—in the context of the cases that have heretofore come before the Court.

Even in *New York v. United States*, 505 U.S. 144 (1992), where Justice Sandra Day O'Connor, speaking for the Court, wrote that:

More recently, the Court has suggested that perhaps not all claims under the Guarantee Clause present nonjusticiable political questions. See *Reynolds v. Sims*, 377 U.S. 533, 582, 84 S.Ct. 1362, 1392, 12 L.Ed.2d 506 (1964) (“some questions raised under the Guarantee Clause are nonjusticiable”). Contemporary commentators have likewise suggested that courts should address the merits of such claims, at least in some circumstances. See, e.g., L. Tribe, *American Constitutional Law* 398 (2d ed. 1988); J. Ely, *Democracy and Distrust: A Theory of Judicial Review* 118, n., 122-123 (1980); W. Wiecek, *The Guarantee Clause of the U.S. Constitution* 287-289, 300 (1972); Merritt, 88 *Colum.L.Rev.*, at 70-78; Bonfield, *The Guarantee Clause of Article IV, Section 4: A Study in Constitutional Desuetude*, 46 *Minn.L.Rev.* 513, 560-565 (1962).

Justice O’Connor was referring only to one case in one state, which could not possibly have extended beyond the boundaries of New York except by case theory as precedent, relying on the traditional jurisprudence of non-interference where no critical federal rights or interests were either raised or involved.

The difficulty of defining what exactly a Republican Form of Government really involves serves as the subject of treatises in history and political philosophy, and involves value judgments. Two major “abstentions” from deciding Republican Form of Government questions illustrate the Court’s purposes in avoiding certain questions: In *Luther v. Borden*, 48 U.S. 1 (*supra*) which constitution and governor were better for Rhode Island? That was clearly a political question best left to the people of Rhode Island. Prior to the *19th Amendment*, the court deemed the question of women’s suffrage also one of political choice: *Minor v. Happersett*, 88 U.S. 162, 22 L.Ed. 627, 21 Wall. 162 (1874). The lessons are simple here: the Court favors local self-government and status quo.

But, as Justice O'Connor's citation to *Reynolds v. Sims* suggests, sometimes electoral law presents federal questions.

When an elite minority are alleged to conspire to impose their will on a majority, as Texas and its allies in this case allege, there is quite frankly no residual trace of a Republic, but only a fraud, a deception of epic proportions which defies the imagination, the pretense of an election where there was only computerized, mechanized manipulation.

Specifically, precisely the evils envisioned by *Reynolds v. Sims* appear to have decided and predominated the Presidential election in these four states which Texas has sued. Specifically, this Court wrote in *Reynolds v. Sims*²:

Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor. Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable. One must be ever aware that the Constitution forbids 'sophisticated as well as simpleminded modes of discrimination.' [internal citation omitted]

In short summary, this Court has simply never been faced with a political problem of these dimensions, at least not since April of 1861. By bringing this suit now, Texas and her sister states, and we as representatives of three states, submit

² *B.A. Reynolds, et al. v. M.O. Sims, et al.*, 377 U.S. 533, 563 (1964).

that this is the moment. Justice O'Connor articulated the opinion that, given the right set of facts, the Court has always held open the possibility that the *Guarantee Clause* presents a justiciable issue. The 2020 election has presented just such a set of facts, as ably presented by the State of Texas.

As this Court explained in *Bush v. Gore* almost precisely twenty years ago:

When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter. The State, of course, after granting the franchise in the special context of Article II, can take back the power to appoint electors. See *id.*, at 35, 13 S.Ct. 3 (“ [T]here is no doubt of the right of the legislature to resume the power **530 at any time, for it can neither be taken away nor abdicated’ ”) (quoting S.Rep. No. 395, 43d Cong., 1st Sess., 9 (1874)).

The right to vote is protected in more than the initial allocation of the franchise. Equal protection applies as well to the manner of its exercise. **Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.** See, e.g., *Harper v. Virginia Bd. of Elections*, 383 U.S. 663, 665, 86 S.Ct. 1079, 16 L.Ed.2d 169 (1966) (“[O]nce the franchise is granted to the electorate, lines may not be drawn which are inconsistent with the Equal Protection Clause of the Fourteenth Amendment”). **It must be remembered that “the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.”** *Reynolds v. Sims*, 377 U.S. 533, 555, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

531 U.S. 98 @105, 121 S.Ct. 525 @530, 148 L.Ed.2d 388 (December 12, 2000)(bold emphasis added).

In other words, the circle stands unbroken between this case and *Reynolds v. Sims* and all relevant jurisprudence. If *Luther v. Borden* had been a nationwide rebellion, if *Minor v. Happersett* had involved the denial of the elective franchise to half the population which had previously enjoyed it, and if the suits regarding these matters had been brought by one set of states suing another set of states pursuant to *Article III, §2, Clauses 1 and 2*, of the *Constitution*, then the Supreme Court would never have originated, evolved, or applied the “Political Question” abstention regarding the *Guarantee Clause*.

3. The Framers’ Intent Regarding the *Guarantee Clause*.

Although the *Guarantee Clause* has not received substantial attention from the Court, its importance to the harmonious operation of the *Constitution* should not be underestimated. It represents the decision by the Framers that in order for their Constitutional design to work, each State must generally govern in the same manner.³ There are limits beyond which the *Constitution* is impaired. That this is clearly so may be demonstrated in the extreme case. Should a State ever decide to eliminate its legislature and transfer the power of the legislative branch to the executive branch, various provisions of the *Constitution* requiring the active participation of state legislatures, such as the critical role played by state

³ See 4 Debates in the Several State Conventions on the Adoption of the *Federal Constitution* 195 (Jonathan Elliot ed., 1836) (statement at North Carolina ratifying convention by future Justice James Iredell: "The meaning of the guaranty provided was this: There being thirteen governments confederated on a republican principle, it was essential to the existence and harmony of the confederacy that each should be a republican government"), quoted in Edward A. Stelzer, Bearing the Judicial Mantle: State Court Enforcement of the *Guarantee Clause*, 68 N.Y.U. L. Rev. 870, 890 & n.147 (1993).

legislatures in the process of ratifying amendments to the *Constitution*, the formation of new states, or the manner of determining the appointment of electors relied upon by Texas in this case, would each be impaired. A fundamental assumption of the *Constitution* is that the residents of every single state must enjoy the benefits of a republican form of government. The *Guarantee Clause* reflects the conviction of the Framers' that these benefits could not be obtained in the absence of a Republican form of government.⁴

At the time of the ratification of the *Constitution*, the status of the states was in flux. For example, whether Vermont was a state or part of its neighboring states was in dispute from 1777 until it was admitted as the 14th state in 1791.⁵ The Northwest Ordinance of 1787, the roadmap for taming the vast Northwest Territory, was issued by the Confederation Congress sitting in New York while the Constitutional Convention was meeting in Philadelphia.⁶ Florida was a territory of Spain⁷, while the Louisiana territory was at various times owned by France or

⁴ See generally *The Federalist No. 43* (J. Madison) (explaining that “[t]he more intimate” union established by the *Constitution* needed an assurance that its “republican members,” i.e., the States would be “substantially maintained,” partly because “[g]overnments of dissimilar principles and forms have been found less adapted to a federal coalition of any sort, than those of a kindred nature”), https://avalon.law.yale.edu/18th_century/fed43.asp (visited Dec. 10, 2020).

⁵ Britannica, *Vermont: Revolution and Statehood* <https://www.britannica.com/place/Vermont/Revolution-and-statehood> (visited Dec. 9, 2020).

⁶ See, e.g., Mark S. Scarberry, *Historical Considerations and Congressional Representation for the District of Columbia*, 60 Ala. L. Rev. 783, 797 (2009).

⁷ See, e.g., Clay Henderson, *The Greening of Florida's Constitution*, 49 Stetson L. Rev. 575, 581–582 (2020).

Spain.⁸ England owned Canada to the North. The United States was thus bounded by potentially hostile neighbors to the North, West, and South, and the states themselves had a variety of conflicting western land claims. It was not inconceivable that a new state formed from land bordering country controlled by a monarchy, such as France, Spain or England, might itself adopt such a government. The experience of the State of Franklin, which was founded in 1784 and disbanded in 1788, was also on the minds of the Framers. Formed during the *Articles of Confederation* from land ceded by North Carolina to the United States, Franklin applied for admission as a state under the *Articles*, receiving seven of the nine required votes. In order to gain leverage over the United States, and force its admission to the Union, Franklin went rogue, and attempted to place itself under Spanish rule, raising the prospect of a hostile new neighbor to North Carolina's west.⁹

⁸ See, e.g., Shael Herman, *The Contribution of Roman Law to the Jurisprudence of Antebellum Louisiana*, 56 La. L. Rev. 257, 261–262 (1995).

⁹ See generally Kat Escher, *The True Story of the Short-Lived State of Franklin*, Smithsonian Magazine, Aug. 23, 2017, <https://www.smithsonianmag.com/smart-news/true-story-short-lived-state-franklin-180964541/> ; History.com Editors, August 23, 1784: State of Franklin Declares Independence (Nov. 13, 2009), <https://www.history.com/this-day-in-history/state-of-franklin-declares-independence>.

For the Framers, the requirement for admission to the Union was a republican form of government.¹⁰ The *Guarantee Clause* was required because it was by no means clear that without it, each new state would adopt a republican form of government on its own, and unless each state governed itself as a republic, the Constitutional design would be disrupted.¹¹

The essential elements of a republican form of government were well understood. The key ingredient, as stated by Alexander Hamilton in *Federalist 57*, were free and fair elections of the officers of the government by the people.¹² The

¹⁰ The *Guarantee Clause* is commonly attributed to James Madison. In a letter in April 1787 to Edmund Randolph, who presented the Virginia Plan to the Convention, Madison “had suggested that ‘an article ought to be inserted expressly guaranteeing the tranquility of the states against internal as well as external danger. . . . Unless the Union be organized efficiently on republican principles innovations of a much more objectionable form may be obtruded.’” Constitution Annotated: Analysis and Interpretation of the *U.S. Constitution*, Art. IV.S1.1.1, (quoting 2 Writings of James Madison 336 (G. Hunt ed., 1900)), https://constitution.congress.gov/browse/essay/artIV-S4-1-1-1/ALDE_00001173/ (visited Dec. 9, 2020).

¹¹ See *The Federalist No. 43* (J. Madison) (emphasizing that *Guarantee Clause* was important element for States to enter into the Union, explaining: “The more intimate the nature of such a union may be, the greater interest have the members in the political institutions of each other; and the greater right to insist that the forms of government under which the compact was entered into should be substantially maintained”), https://avalon.law.yale.edu/18th_century/fed43.asp (visited Dec. 9, 2020).

¹² *Federalist No. 57* (A Hamilton) (“The elective mode of obtaining rulers is the characteristic policy of republican government.”), https://avalon.law.yale.edu/18th_century/fed57.asp (visited Dec. 9, 2020); see also *Buchanan v. Rhodes*, 249 F. Supp. 860, 865 (N.D. Ohio), *appeal dismissed*, 385 U.S. 3 (1966), *vacated and remanded to convene three-judge court*, 400 F.2d 882 (6th Cir.), *cert. denied*, 393 U.S. 839 (1968) (“The first principle inherent in our republican form of government . . . is that individual citizens submit to rule by legislative fiat enacted by a majority of a popularly elected legislative body working within a constitutional framework.”), quoted in Deborah Jones Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 Colum. L. Rev. 1, 25 n.133 (1988); Arthur E. Bonfield, *The Guarantee Clause of Article IV, Section 4: A Study in Constitutional Desuetude*, 46 Minn. L. Rev. 513, 560 (1962) (“Among such eternal requisites of republican government might be some sort of effective elections with a fairly large group of society participating therein . . .”), quoted in David S. Louk, *Reconstructing the Congressional Guarantee of Republican Government*, 73 Vand. L. Rev. 673, 677 n.5 (2020).

second element was adherence to the rule of law.¹³ The final element was the absence of a monarchy, *i.e.*, the officers of the government served for only the term for which they were elected, after which power peacefully transferred.¹⁴

Each of these elements was required for a state to be a member of the union. Each of these elements was required for the Constitutional design to work with the harmony envisioned by the Framers. The facts before the Court today, and the state of the nation at large, demonstrate how prescient the Framers were in this regard.

4. The Case Before the Court Calls for the Application of the *Guarantee Clause* by the Court.

The facts so ably set forth by the State of Texas demonstrate that partisan Democrat officers in the Defendant States cooperated with the Democrat party to unconstitutionally change the election laws of each of the Defendant States to the advantage of the Democrat candidates in those states. Texas' case that the Elector Clause places plenary power in the hands of the state legislatures, and not in the officers or courts of the states, is well argued and will not be repeated here. Our point is straightforward: it is the obligation of the Court under the *Guarantee*

¹³ See William Wiecek, *The Guarantee Clause of the U.S. Constitution* 27-50 (1972); see also Jean Jacques Rousseau, *The Social Contract* 39 (W. Kendall trans. 1959) ("I therefore apply the term republic to any state that is ruled by laws. . . ."), quoted in Thomas A. Smith, Note, *The Rule of Law and the States: A New Interpretation of the Guarantee Clause*, 93 *Yale L.J.* 561 (1984); An American Citizen IV, *On the Federal Government* (Oct. 1787) (stating that Guarantee Clause prevented "any man, or body of men, however rich or powerful" from making "an alteration in the form of government of any state, whereby the powers thereof shall be attempted to be taken out of the hands of the people at large") (original emphasis deleted), quoted in Merritt, *supra*, 88 *Colum. L. Rev.* at 35.

¹⁴ The *Federalist No. 43* (J. Madison) (stating that *Guarantee Clause* gives federal government power to "defend the system against aristocratic or monarchical innovations"), https://avalon.law.yale.edu/18th_century/fed43.asp (visited Dec. 9, 2020).

Clause to ensure that partisan officers in the Defendant States not be permitted to act as an oligarchy by replacing the legislature's direction for the appointment of electors with their own. To allow such an act would permit an elite group of partisan officers, acting with no authority, to abandon the required republican form of government in their states. This the *Constitution* does not allow.

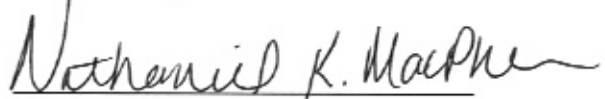
CONCLUSION

We pray for relief by this Court granting a full and fair trial of this actual case and controversy among two or more states of the Union, as authorized by *Article III, §2, Clauses 1 and 2* of the *Constitution*. This case plainly arises under the *Constitution* and laws of the United States, and falls within the original jurisdiction of this Court.

No other arm of the United States government—the entity that has made the guarantee of a Republican Form of Government to each state, and to all the states together as a federal unit, jointly and severally—can act. The case is now before this Court, which is uniquely positioned to resolve the issue. The foundation of our nation—free and fair elections reflecting the will of the governed—is at stake. We respectfully urge the Court to act, and to grant the prayer for relief as stated by the State of Texas.

The application for a Temporary Restraining Order and an Emergency Injunction should be granted.

Respectfully submitted.



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