

No. 19-1389

IN THE

SUPREME COURT OF THE UNITED STATES

BRENDA LI GARCIA; JOSEPH DANIEL CASCINO; SHANDA
MARIE SANSING; TEXAS DEMOCRATIC PARTY; AND
GILBERT HINOJOSA, CHAIR OF THE TEXAS DEMOCRATIC
PARTY,
Petitioners,

v.

GREG ABBOTT, GOVERNOR OF TEXAS; RUTH HUGHS,
TEXAS SECRETARY OF STATE; AND KEN PAXTON,
ATTORNEY GENERAL OF TEXAS,
Respondents.

**On Petition for a Writ of Certiorari Before Judgment
To the United States Court of Appeals for the
Fifth Circuit**

**BRIEF OF *AMICI CURIAE* VETERANS
ADM. CHARLES ABBOT, WILLIAM BOATMAN, GEN. THOMAS BOSTICK,
LT. GEN. DANIEL CHRISTMAN, GEN. WESLEY CLARK, DONALD DORSEY,
LT. GEN. JAMES PEAKE, M.D., HON. JOE REEDER,
LT. GEN. CHARLES ROADMAN II, M.D., and GEN. ERIC SHINSEKI
IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE* VETERANS¹

Amici are veterans with substantial experience in health and public health issues. Amici include Secretaries of Veterans Affairs under Presidents George W. Bush and Barack Obama, and all amici view voting by mail as a non-partisan issue.

Amici support the right of all Texas voters to vote by mail, not just veterans. The Twenty-Sixth Amendment issue in this case is, however, particularly important to many Texas veterans under age 65.

Large numbers have compromised immune systems, asthma, post-traumatic stress disorder, or other conditions that make the health consequences of contracting COVID-19 especially severe. The Texas Election Code allows voters under 65 to vote by mail based on disability, but leaves unclear which conditions satisfy its disability definition. The Texas definition differs from federal disability definitions. These veterans risk their health if they vote in person, and criminal prosecution if they vote by mail. They lose their right to vote if they are unwilling to run either risk.

Admiral Charles S. Abbot, retired 4-star, was Deputy Commander, European Command (1998–2000) and Commander, U. S. 6th Fleet (1996–1998). He served 16 years (2003–2019) as President and CEO of the Navy-Marine Corps Relief Society, whose mission is the health and welfare of Sailors and Marines.

¹ Pursuant to Rule 37.2, counsel for amici notified counsel of record for all parties of their intent to file an amicus brief at least ten days prior to the due date for the brief. Each consented to the filing of this brief. Pursuant to Rule 37.6, counsel for amici affirms that no counsel for a party authored this brief in whole or in part, and no person other than counsel for amici, whose services are pro bono publico, made a monetary contribution to its preparation or submission.

William J. Boatman served as a Combat Corpsman (medic) with the Marines in Vietnam. Classified by the Veterans Administration as 100% disabled due to post-traumatic stress disorder (“PTSD”) and Agent Orange exposure, he is Texas Chair for PTSD Education and Outreach for the Vietnam Veterans of America.

Lt. General Thomas Bostick, retired, graduated from West Point and subsequently earned master’s and Ph. D. in engineering. He served as Commander, Gulf Region Division—Iraq, Commander, U. S. Army Recruiting Command, U. S. Army Deputy Chief of Staff for Personnel, and Chief of Engineers and Commanding General, U. S. Army Corps of Engineers. The Corps of Engineers is responsible for much of the county’s military construction and civil works, and also provides crisis support, including in the current pandemic.

Lt. Gen. Daniel W. Christman, retired, graduated from West Point. He served in combat in Vietnam with the 101st Airborne Division; as US representative to NATO’s military committee (1993–1994); as Assistant to the Chairman of the Joint Chiefs of Staff (1994–1996); and as Superintendent of the United States Military Academy (1996–2001).

General Wesley K. Clark, retired 4-star, graduated from West Point. He was wounded in action leading an infantry company in Vietnam. He served as Supreme Allied Commander, Europe (1997–2000) and Commander-in-Chief, U. S. Southern Command (1996–1999).

Donald P. Dorsey of Port Neches, Texas enlisted at 22 years old in the Marine Corps and served as a squad leader running assassination and reconnaissance missions in Vietnam. Classified by the VA as 100% disabled due to PTSD, he is President of the Texas Association of Vietnam Veterans and helped achieve national settlement for veterans suffering the debilitating effects of Agent Orange.

Lt. General James B. Peake, M.D., retired, graduated from West Point. He served in Vietnam with the 101st Airborne, where he was wounded in action and awarded the Silver Star, Bronze Star, and Purple Heart with oak leaf cluster. He then earned a medical doctorate. Dr. Peake served in multiple medical capacities, including Surgeon General of the Army. After retiring, he served as an executive with Project Hope and in health care businesses, and from 2007–2009 as Secretary of Veterans Affairs.

Hon. Joe R. Reeder graduated from West Point in 1970 and was a Ranger in the 82nd Airborne Division. As Undersecretary of the Army from 1993–1997 he worked closely with the Army Surgeon General and Assistant Secretary of Defense for Health Affairs on PTSD. As Chairman of the Panama Canal, he was deeply involved in protecting military and Canal employees from the Dengue virus.

Lt. Gen. Charles Roadman II, M.D., retired, joined the Air Force in 1968. He earned an M.D. from Emory University. He served the Air Force in multiple medical

capacities, ultimately as Surgeon General 1996–1999. After retiring from the Air Force, Lt. Gen. Roadman served as CEO of the American Health Care Association and CEO of Assisted Living Concepts.

General Eric Shinseki, retired 4-star, graduated from West Point and served two tours of duty in Vietnam, where he was wounded in action. He later served as Chief of Staff of the Army. After retiring from the Army, he served as Secretary of Veterans Affairs from 2009–2014.

STATEMENT OF FACTS

Of the 1,552,000 Texas veterans, 926,000 will be under age 65 this fall.²

The Texas Elections Code allows those aged 65 and over to choose to vote by mail without having to give any reason.³ Federal law requires states to allow all active duty service members and civilians living abroad, regardless of age, to vote by mail without having to ask.⁴ But Texas treats every voter under age 65 who is not on active duty or living abroad and does not expect to be absent or in jail on election day differently.

Texas bars such a voter from voting by mail unless the voter has a condition that prevents voting in person without a likelihood of injury to health.⁵ This matters to many combat veterans under age 65. Their service injuries and exposures make contracting COVID-19 especially dangerous to their health.

Some combat veterans under age 65 served at age 18 in the last years of the Vietnam war, but most served in “Gulf War I” (pre 9/11) or in “Gulf War II” (post 9/11).⁶

² DEPT OF VETERANS AFFAIRS, NATIONAL CENTER FOR VETERAN ANALYSIS AND STATISTICS, STATE SUMMARY TEXAS (Sept. 30, 2017), https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Texas.pdf.

³ TEX. ELEC. CODE § 82.003.

⁴ 52 U.S.C. § 20302(1), (8).

⁵ TEX. ELEC. CODE § 82.002(a).

⁶ TEXAS WORKFORCE INVESTMENT COUNCIL, VETERANS IN TEXAS: A DEMOGRAPHIC STUDY 15 (rev. 2019), <https://gov.texas.gov/uploads/files/organization/twic/Veterans-in-Texas-2019.pdf>.

According to the Centers for Disease Control, many conditions increase the risk of severe illness from COVID-19. These include asthma, compromised immune systems, cancer, and cardiovascular disease.⁷

Many Gulf War I combat veterans breathed air poisoned by the oil field fires set by Saddam Hussein's army as it retreated from Kuwait, and by chemicals used to suppress those fires.⁸ These exposures have documented health effects of the types the CDC recognizes as aggravating the consequences of contracting COVID-19.⁹

Many Gulf War II combat veterans breathed air poisoned from burn pits destroying ammunition containing depleted uranium and other toxic substances.¹⁰ While research is ongoing, these exposures appear to have similar long-term health effects.¹¹

⁷ CTRS. FOR DISEASE CONTROL, PEOPLE OF ANY AGE WITH UNDERLYING MEDICAL CONDITIONS (2020), https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-with-medical-conditions.html?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fneed-extra-precautions%2Fgroups-at-higher-risk.html.

⁸ RESEARCH ADVISORY COMMITTEE ON GULF WAR VETERANS' ILLNESSES, GULF WAR ILLNESS AND THE HEALTH OF GULF WAR VETERANS: SCIENTIFIC FINDINGS AND RECOMMENDATIONS 75–76 (2008).

⁹ *Id.* at 79–83.

¹⁰ *Long-Term Health Consequences of Exposure to Burn Pits in Iraq and Afghanistan*, 80 MILITARY MEDICINE 601, 601 (2015), <https://doi.org/10.7205/MILMED-D-15-00039>.

¹¹ *Id.* at 601–03 (concluding data suggests broad exposure to burn pit emissions may be associated with long term health effects and recommending further study).

Many combat veterans suffer from post-traumatic stress disorder (PTSD).¹² Associated physical conditions such as cardiovascular disease¹³ aggravate the effects of COVID-19.

As interpreted by the Texas Supreme Court,¹⁴ the Texas statute leaves unclear which such conditions entitle a voter under 65 to vote by mail. That court held that lack of immunity to COVID-19, by itself, is not such a condition, but whether other conditions, alone or in combination, suffice is up to each voter to determine.¹⁵

One respondent, the Texas Attorney General, has threatened criminal prosecution of voters for checking disability on the vote-by-mail form on bases that do not (in his opinion) qualify, and third parties who seek to encourage such voting by mail.¹⁶ The resulting confusion is especially problematic for veterans.

¹² RAND CENTER FOR MILITARY HEALTH POLICY RESEARCH, *INVISIBLE WOUNDS OF WAR: PSYCHOLOGICAL AND COGNITIVE INJURIES, THEIR CONSEQUENCES, AND SERVICES TO ASSIST RECOVERY* 36, 42–43 (Terri Tanielian & Lisa H. Jaycox eds., 2008), <https://www.rand.org/pubs/monographs/MG720.html>.

¹³ A.L. Ryder et al., *PTSD AND PHYSICAL HEALTH*, 20 *CURR. PSYCHIATRY REP.* 116 (2018), <https://doi.org/10.1007/s11920-018-0977-9>.

¹⁴ *In re State of Texas*, 2020 WL 2759629 (Tex. Sup. Ct. May 27, 2020).

¹⁵ *Id.* at *10 (“We agree, of course, that a voter can take into consideration aspects of his health and his health history that are physical conditions in deciding whether, under the circumstances, to apply to vote by mail because of disability. We disagree that lack of immunity, by itself, is one of them.”); *Id.* at *15 (Bland, J., concurring)(“And a voter who lacks COVID-19 immunity may be disabled under the Election Code if the voter's lack of immunity, together with that voter's health history and the local voting environment, causes a likelihood that in-person voting will injure the voter's health.”).

¹⁶ *See AG Paxton Warns County Officials to Avoid Misleading the Public on Vote by Mail Laws*, June 14, 2020, <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-warns-county-officials-avoid-misleading-public-vote-mail-laws>; *AG Paxton Advises County Officials to Avoid Misleading the Public on Vote by Mail Laws*, May 1, 2020, <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-advises-county-officials-avoid-misleading-public-vote-mail-laws>.

Among Texas veterans, 28% (426,566) report a disability, and 23% (350,021) have a service-connected disability rating.¹⁷ Those disability ratings track definitions in the Code of Federal Regulations.¹⁸ The Texas Attorney General has opined that disability determinations under federal definitions are neither determinative of qualification to vote by mail nor mutually exclusive.¹⁹

SUMMARY OF ARGUMENT

By expressly discriminating against voters under 65, the Texas vote-by-mail statute abridges their right to vote on account of age. This violates the plain text of the Twenty-Sixth Amendment. The abridgment is material.

Texas argues that minimizing voter fraud justifies discrimination on account of age in voting by mail. Whatever might be the case under the Equal Protection Clause of the Fourteenth Amendment, the Twenty-Sixth Amendment does not allow such justification. In any event, Texas has articulated no theory as to why younger voters pose greater vote-by-mail fraud risk than older voters.

One member of the motions panel below speculated that Texas might prefer to cure the unconstitutionality of its vote-by-mail statute by eliminating all voting by mail

¹⁷ See VETERANS IN TEXAS: A DEMOGRAPHIC STUDY, *supra* note 6, at 8, 16–17.

¹⁸ See 38 C.F.R. §§ 4.40–4.150.

¹⁹ Tex. Att’y Gen. Op. No. KP-0009 (2015).

(other, presumably, than by voters on active duty). The only lawful relief, however, is to allow all voters to choose to vote by mail on the same terms as those 65 and older.

For 2020, moreover, this is the only possible relief. Many tens of thousands of Texas voters have already requested mail ballots, either for all 2020 elections or specifically for the November 3, 2020 general election. For 2021 and thereafter, Texas remains free prospectively to abolish voting by mail in state and local elections.

ARGUMENT

I. **IN ALLOWING ALL VOTERS 65 OR OLDER BUT FEW YOUNGER VOTERS TO VOTE BY MAIL, TEXAS VIOLATES THE TWENTY-SIXTH AMENDMENT.**

By distinguishing between voters aged 65 and older and voters younger than 65, the Texas vote-by-mail statute abridges the right to vote on account of age, in violation of the plain text of the Twenty-Sixth Amendment.

A. **TEXAS ABRIDGES THE RIGHT TO VOTE ON ACCOUNT OF AGE.**

“A qualified voter is eligible for early voting by mail if the voter is 65 years of age or older on election day.” TEX. ELEC. CODE § 82.003. No excuse is needed. In contrast, younger voters must claim an excuse under section 82.002.

As the court below acknowledged, the Texas Election Code thus “facially discriminates on the basis of age.”²⁰ But it held that the Texas discrimination need

²⁰ *Texas Democratic Party v. Abbott*, 961 F.3d 389, 402 (5th Cir. 2020).

only have a rational basis. Noting that age is not a suspect class for purposes of the Equal Protection Clause of the Fourteenth Amendment, it asserted: “There is no reason to treat” the Twenty-Sixth Amendment “differently.”²¹

There *are* reasons to treat the Twenty-Sixth Amendment differently—its text, its adoption context, and caselaw on amendments that ban other voting discrimination.

1. Text

For all citizens who are eighteen years of age or older the Twenty-Sixth Amendment expressly provides that the right to vote shall not be denied or abridged “on account of age.” Whether or not the Equal Protection Clause would permit Texas to treat older voters more favorably than younger voters, the Twenty-Sixth Amendment prohibits such abridgment of the right to vote.

For purposes of the right to vote, the Twenty-Sixth Amendment makes age a classification that is not merely suspect—it is forbidden. The court below is thus simply incorrect that the Texas age-based vote-by-mail discrimination does not offend the Constitution. It offends the Twenty-Sixth Amendment.

2. Adoption context

In Title III of the Voting Rights Act of 1970, Congress lowered the voting age to 18, relying on its enforcement power under the Fourteenth Amendment. By 5-4

²¹ *Id.* at 409.

majorities, this Court held Title III constitutional as applied to federal elections but unconstitutional as applied to state elections.²²

Four Justices reasoned that only this Court can determine whether age discrimination is constitutionally suspect under the Fourteenth Amendment, and had not done so.²³ Justice Black reasoned that Congress could use the Fourteenth Amendment's enforcement clause to remedy only race-based state voting discrimination, but that Congress could use its Article I power for federal elections.²⁴

Congress immediately, and nearly unanimously, voted to submit the Twenty-Sixth Amendment for ratification, and the States promptly ratified it.

3. Construction of other similarly worded voting rights amendments.

Unlike Title III of the Voting Rights Act of 1970, the Twenty-Sixth Amendment went beyond lowering the voting age to 18. It provided that the right of all voters eighteen or older “to vote shall not be denied or abridged by the United States or by any State.”²⁵ In this respect it was modeled on the Fifteenth and the Nineteenth

²² *Oregon v. Mitchell*, 400 U.S. 112 (1970).

²³ *Id.* at 135-41 (Douglas, J., concurring in part and dissenting in part); *id.* at 250-78 (Brennan, J., concurring in part and dissenting in part).

²⁴ *Id.* at 119-30 (Black, J.)

²⁵ U.S. Const., amend. XXVI.

Amendments, which bar denial or abridgment of the right to vote, respectively, “on account of race, color, or previous condition of servitude” and “on account of sex.”²⁶

A racially discriminatory voting restriction that does not, or may not, violate the Fourteenth Amendment may nevertheless violate the Fifteenth Amendment’s “race neutrality command,” because it “has independent meaning and force.”²⁷ So does the Twenty-Sixth Amendment’s age neutrality command.

“Previous to” the Fifteenth Amendment, this Court held five years after its ratification, “there was no constitutional guaranty against” racial discrimination in voting, but “now there is.”²⁸ Previous to the Twenty-Sixth Amendment, there was no constitutional guaranty against age-based discrimination in voting, but now there is.

“The United States shall guarantee to every State in this Union a Republican Form of Government”²⁹ “It is ESSENTIAL to such a government that it be derived from the great body of the people, not from an inconsiderable proportion, or a favored class of it”³⁰

²⁶ U.S. Const., amend. XV; U.S. Const., amend. XIX.

²⁷ *Rice v. Cayetano*, 528 U.S. 495, 522 (2000).

²⁸ *United States v. Reese*, 92 U.S. 214, 218 (1875).

²⁹ U. S. Const. Art. IV, § 4.

³⁰ THE FEDERALIST NO. 39, at 250–51 (James Madison) (Cooke ed., 1961) (emphasis in original).

Chief Justice Taney early on held that Guarantee Clause issues are non-justiciable because “it rests with Congress to decide” what counts as “the republican character” of government.³¹ By ratifying the Fifteenth, Nineteenth and Twenty-Sixth Amendments, however, Congress and the United States have decided that the republican character of government forbids discrimination in the right to vote on account of race, sex, or age.

B. THE TEXAS ABRIDGMENT OF THE RIGHT TO VOTE IS MATERIAL.

The motions panel below held that the Texas vote-by-mail statute is likely constitutional because it imposes on younger voters only the “inconvenience” of voting in person.³² That assertion is wrong as a matter both of law and of fact.

The Twenty-Sixth Amendment provides that neither the United States nor any State shall deny *or* “abridge” the right to vote on account of age. “Abridge” must be given its own meaning. It sweeps much more broadly than “deny.” The relevant dictionary definition of “abridge” is to “limit” or “curtail” a right or privilege, *e.g.*, “*an unconstitutional law that abridged the rights of citizens.*”³³

³¹ *Luther v. Borden*, 7 How. 1, 42 L.Ed. 581 (1849). Where Congress has not acted, the Court has not yet opted to reconsider that proposition, *see Davis v. Ohio*, 241 U.S. 118 (1912), though it has broached the possibility, *see New York v. United States*, 505 U.S. 144, 183-85 (1992) and many have urged it to do so. *See* R. Williams, *The “Guarantee” Clause*, 2018 HARVARD L. REV. 602 (2018).

³² *Texas Democratic Party v. Abbott*, 961 F.3d 389, 404–05 (5th Cir. 2020).

³³ American Heritage Dictionary of the English Language 6 (Houghton Mifflin Harcourt, 5th ed. 2011) (italics in original).

This Court summarily affirmed a three-judge district court’s invalidation under the Twenty-Sixth Amendment of a voter registration questionnaire required by Waller County, Texas that treated young registrants differently from others.³⁴ (Waller County is the home of the historically black university Prairie View A&M.)

The district court had quoted from the legislative history of the Twenty-Sixth Amendment: “forcing young voters to undertake special burdens obtaining absentee ballots ... in order to exercise their right to vote might serve to dissuade them from participating in the election.”³⁵ Here, forcing younger voters either to run the health risks of voting in person or not vote has the same effect.

“The Twenty-Sixth Amendment, like the Twenty-Fourth, Nineteenth, and Fifteenth before it, ‘nullifies sophisticated as well as simple-minded modes of discrimination. It hits onerous procedural requirements which effectively handicap exercise of the franchise ... although the abstract right to vote may remain unrestricted.’”³⁶

In the current pandemic the Texas statute does more than “inconvenience” younger voters. It adds appreciably to the risk that they will contract COVID-19, and to the risk that they will spread the disease to others.

The election is a Presidential election, so turnout will be at its highest. It is the first general election since the Texas legislature abolished straight-ticket voting, so it

³⁴ *Symm v. United States*, 439 U.S. 1105 (1979) (per curiam), *summarily aff’g U.S. v. Texas*, 445 F.Supp. 1245 (S.D. Tex. 1978) (three-judge court).

³⁵ 445 F. Supp. at 1254 (quoting Senate Report No. 26, 92nd Cong., 1st Sess. (1971)).

³⁶ *Jolicoeur v. Mihaly*, 488 P.2d 1, 4 (Cal. 1971) (quoting *Lane v. Wilson*, 307 U. S. 268, 275 (1939)).

will take each voter much longer than before to vote. To vote in person, each voter must stand in line with what in urban and suburban areas likely will be hundreds of voters, and then must stand at a voting booth in a polling station at which dozens of others are voting, and hundreds of others have recently voted. Some of those voters will be asymptomatic spreaders, or superspreaders, of the virus that causes COVID-19. Many may refuse to wear masks or to maintain social distance.

Voting in person will thus expose each voter to greater risk of contracting COVID-19 than voting by mail at home, and it will expose those with conditions common to combat veterans to greater risks of serious injury or death. The CDC recommends “[v]oting alternatives that limit the number of people you come in contact with or the amount of time you are in contact with others,” such as mail-in methods.³⁷

Texas allows younger voters to avoid such risks only if they have a “physical condition that prevents the voter from” voting in person “without a likelihood of ... injuring the voter’s health,”³⁸ but voters have no way to know whether they qualify. Combined with the risk of contracting COVID-19 if they vote in person, the Texas discrimination in voting by mail on account of age is likely to “dissuade” at least some voters under 65 “from participating in the election.”

³⁷ CTRS. FOR DISEASE CONTROL, CONSIDERATIONS FOR ELECTION POLLING LOCATIONS AND VOTERS: INTERIM GUIDANCE TO PREVENT SPREAD OF CORONAVIRUS DISEASE 2019 (COVID-19) (2020), <https://www.cdc.gov/coronavirus/2019-ncov/community/election-polling-locations.html>.

³⁸ TEX. ELEC. CODE § 82.002.

II. TEXAS CANNOT DEFEND THE VIOLATION BASED ON ITS INTEREST IN MINIMIZING VOTER FRAUD.

The motions panel below discussed at length the State's asserted interest in minimizing voter fraud by limiting voting by mail.³⁹ Such justification is dubious, at best: Several states conduct elections almost entirely by mail; most states allow any voter to vote by mail; and other states, counties and cities are authorizing vote by mail during this pandemic. For two reasons, an interest in minimizing voter fraud cannot save the Texas age-based statutory discrimination in who can vote by mail.

As the same court of appeals held, "there is no room" even "for a compelling state interest defense" in a Fifteenth Amendment case, "as the Fifteenth Amendment's prohibition" against race-based voting discrimination "is absolute."⁴⁰ The Twenty-Sixth Amendment's bar against age-based voting discrimination is equally absolute.

Here the voter fraud argument could not pass even rational basis muster. Texas has not yet articulated even how the risk of voter fraud in voting by mail could be greater for voters under 65 and not on active duty or living abroad than for older voters. Nor has the State attempted to explain why the various measures available to make vote-by-mail fraud harder to practice and easier to detect, and the measures available to deter such fraud, are less adequate for younger voters.

³⁹ *Texas Democratic Party v. Abbott*, 961 F.3d 389, 413–14, 417 (Ho, J., concurring).

⁴⁰ *Prejean v. Foster*, 227 F.3d 504, 519 (5th Cir. 2000).

III. IN 2020, ALL TEXAS VOTERS ARE ENTITLED TO VOTE BY MAIL.

One panel member below reasoned that no relief should be granted even if Texas's age-based discrimination were held unconstitutional, because Texas might choose to abolish voting by mail altogether. The contention is contrary to precedent, and in 2020, the option is unavailable in fact.

This Court struck down an otherwise lawful literacy test requirement because the state had excepted from it any person who had been entitled before the Fifteenth Amendment to vote.⁴¹ That is, it held a race-based discriminatory voting benefit must be extended to all voters. The same should be true of the Texas age-based discriminatory voting benefit.

As a practical matter, it is too late in 2020 for Texas to abolish voting by mail. The facts are reflected in the Brief of Amici Curiae Harris County, Fort Bend County, Travis County and Cameron County, Chris Hollins, Harris County Clerk, et al. at pp. 5–7. In Harris County (Houston), more than 40% of Democratic primary voters and nearly 60% of Republican primary voters voted by mail. In the fifteen counties with the most registered voters, nearly 29% of Democratic and nearly 26% of Republican primary voters voted by mail. Many voters requested mail ballots for all elections this year. Additional vote-by-mail requests continue to pour in. Between the primary and the primary run-off, additional requests in Harris County increased 109%.

⁴¹ *Guinn v. United States*, 238 U.S. 347, 363–64 (1915).

CONCLUSION

The texts of the Fifteenth, Nineteenth, and Twenty-Sixth Amendments to the Constitution are identical, save for their respective protected classes. Where the text is consistent, so must be the interpretation. The Twenty-Sixth Amendment constitutes an “absolute” prohibition on discrimination based on age in the context of voting, consistent with this Court’s decisions regarding the Fifteenth Amendment. The Texas statute on its face discriminates on the basis of age.

Amici curiae veterans respectfully urge this Court to grant the petition for certiorari, set expedited briefing, and hold Texas’s statute unconstitutional in violation of the Twenty-Sixth Amendment soon enough to allow all younger voters who wish to vote by mail in the November 3, 2020 general election to do so, just as all older voters can do.

Respectfully submitted,

/s/ P.M. Schenkkan

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