

**IN THE UNITED STATES DISTRICT COURT
TEXAS WESTERN DISTRICT
AUSTIN DIVISION**

DESSIE MARIA ANDREWS
Plaintiff,

v.

GREG ABBOTT et al
Defendants.

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Civil Action No. 1:20-CV-0608-LY

**PLAINTIFF’S OBJECTION TO DEFENDANT GREGG ABBOTT’S
MOTION TO DISMISS
(Docket #6)**

Dessie Andrews (hereinafter “I”, “me”, “mine”, “Andrews”, “Plaintiff”) files her Objection to “Governor Abbott’s” Motion to Dismiss for lack of subject-matter jurisdiction and failure to state a claim upon which relief can be granted, and will show the Court the following:

1. All powers delegated to any officers of federal or state governments which were instituted by the People, were/are derived from the consent of the governed.
2. The conditions imposed on those delegated powers were that Governments were to secure the unalienable Rights of the People endowed by their Creator and the Laws of Nature and of Nature’s God.
3. It has, since the Declaration of Independence and the ratification of the Constitution of the United States of America of September 17, 1787 and the convening of the First Congress, that any man who assumes the duties of an office and holds the power delegated to the man holding that office, must first take the Oaths mandated by the federal and state constitutions.

4. If he doesn't freely take and file those oaths, he is not entitled to the office and any acts he performs are not only outside the scope of the office but also *ultra virus*.
5. After being elected governor of Texas, Greg Abbot did not take the required oath of office mandated by Art. VI, Sec. 3 of the Constitution and 1 Stat 23.
6. Before the request for dismissal now before the Court can be determined, Plaintiff notices the Court, that although she sued Greg Abbott in his personal and official capacity, she has information and belief that Abbott does not sit in an official capacity.
7. The Motion to Dismiss is brought under the premise that the Governor or Office of the Governor was sued.
8. Before addressing the merits of the case, this Court must first determine if Greg Abbott has met the qualifications of a government public officer.
9. Only after Abbott proves his qualifications as Governor can I proceed to answer the issues brought in the Motion to Dismiss.
10. Before bringing suit against Mr. Abbott, I exhausted my administrative remedy by submitting a TPIA request to the Governor on May 2, 2020.¹
11. On May 5, 2020², I received a request for clarification from Joseph Behnke, Assistant General Counsel, Office of the Governor on May 2, and the same day sent him a more extensive explanation of what I was seeking.
12. I received no more communication with or about my TPIA request from either Governor Abbott or his staff.
13. I did however, obtain, from another source, Greg Abbott's Texas Art. XVI, statement and oath, properly filed after his election on November 6, 2018.

¹ Exhibit 1, Texas Public Information Act Request, attached hereto and incorporated herein.

² Exhibit 2, Communications with Governor's office concerning requested information.

14. No request to proper sources has provided a copy of Greg Abbott's U.S. Constitutionally mandated oath in Art. VI, Sec. 3 oath, and it is my belief that he has not taken that oath.
15. 1 Stat 23 Sec. 23 (June 1, 1789) commands the following: " And the members of the several State legislatures, and all executive and judicial officers of the several States, who shall be chose or appointed after the first day of August, shall, before they proceed to execute the duties of their respective offices, take the foregoing oath or affirmation, which shall e administered b the person or persons, who by the law of the State shall be authorized to administer the oath of office; and the person or persons so administering the oath hereby required to be taken, shall cause a record or certificate thereof to be made, in the same manner, as, by the law of the State, he or they shall be directed to record or certify the oath of office.
16. Sec. 1 of 1 Stat 23, states: "That the oath or affirmation required by the sixth article of the Constitution of the United States, shall be administered in the form following, to wit: "I, A. B. do solemnly swear or affirm (as the case may be) that I will support the Constitution of the United States."
17. Sec. 4. of 1 Stat 23 states that any officers who do not take the oath shall incur the same penalties, in case of failure, as shall be imposed by law in case of failure in taking their respective oaths of office.
18. There are few court cases regarding the failure to take required official oaths, however, *Flatan v. State*, 56 Tex. 93 (1882) held that without having qualified for office, a person has no right to the position.
19. Other courts have held that failure of an official to subscribe a required oath will simply render him a *de facto* officer and not invalidate his acts, but it should be noted that Tex.Gov't Code §601.008 addresses that issue and is broad and appears to be applicable to **all** officers.

20. Texas Government Code §608.008. Unauthorized Officers.

(a) An officer or court of this state or of a municipality may not make, order, allow, or audit payment of a person's claim for compensation, fees, perquisites, or services as an officer of the state or municipality unless the person;

(1) has been:

(A) lawfully elected as the officer and determined to be elected to the office by the canvass conducted of the election for the office;

(B) appointed as the officer by the lawful appointing authority; or

(C) adjudged to be the officer by a state court of competent jurisdiction; and

(2) has qualified as the officer under law.

(b) A person who has not been elected or appointed to an office or has not qualified for office, as prescribed by Subsection (a), is not entitled to:

(1) receive payment for services as the officer; or

(2) exercise the powers of jurisdiction of the office.

(c) The official acts of a person who claims a right to exercise the power or jurisdiction of an office contrary to this section are void.

21. One of the qualifications to be an officer under the law is the taking of the Art. VI, Sec. 3 oath.

22. If all the qualifications are not met, and he is not immediately removed, the "official" sits *de facto*.

23. The doctrine of officers *de facto* was created as a matter of public policy to protect both an officer appointed by some power having "color" of authority to appoint him and the public relying on the validity of that appointment.

24. The *de facto* doctrine springs from the fear of the chaos that would result from multiple and repetitious suits challenging every action taken by every official whose claim to office could be open to question, and seeks to protect the public by insuring the orderly functions of the government despite technical defects in title to office 63A Am. Jur. 2d, Public Officers and

Employees § 578, pp 1080-1081 (1984) (footnote omitted). *Ryder v. United States*, 515 U.S. 177, (1995)

25. Plaintiff posits that the real pandemic in Texas is the fact that she has not yet found one “public official or officer” who has complied with the constitutional mandate to take and file an oath to support the Constitution of the United States, even though the Texas Bill of Rights Art. 1, Sec. 1 states that Texas is a free and independent State, subject only to the Constitution of the United States.
26. It is my understanding that a public official has been allowed to sit *de facto* until that condition is challenged, for fear of the ensuing chaos.
27. I assert that we are in the middle of the biggest chaotic condition ever to touch the soil of Texas, so it is an opportune time to oust all those who are *de facto* and start with a *de jure* government, just as the People of Texas who have lost everything in this manufactured chaos are forced to start anew.
28. The Declaration of Independence tells us that whenever any Form of Government becomes destructive of these ends (Securing the unalienable Rights of the People), it is the Right of the People to alter or to abolish it.
29. A *de facto* officer cannot cure his transgressions because he cannot back date his oath of office, there are time constraints and parameters on the taking of the oath.
30. The time to abolish a government that doesn’t serve the People is now.
31. In The Wizard of Oz, the man behind the curtain was in control of all of Oz and the people therein until the curtain was drawn back.
32. I have made a timely challenge to the constitutional validity of Greg Abbott’s *de jure* authority to occupy the office of Governor or perform the duties of a public officer in Texas.

33. Greg Abbot has neglected to take the Art. VI, Sec. 3 Oath, which the Founders held to be so important to this country and her laws that they took up the issue as the first item on the agenda of the first meeting of the first Congress after the Establishment of the Constitution of September 17, 1787.
34. I object to the Attorney General's representation of Greg Abbott or "Governor" Abbott, as I posit that Abbot, because he has failed to qualify as a *de jure* officer is not a state officer.
35. The Office of the Attorney General may provide legal representation for the State, its officials and agencies.
36. The taking of the oath of office is the transfer of delegation of power granted by the People to the government instituted among men.
37. Without those oaths, the man does not assume the powers or duties of the office and all his acts are *ultra virus*.
38. Before any consideration of the Motion to Dismiss, this Court must hold a hearing and determine whether Greg Abbott has met the qualifications of the office of Governor.
39. Unless Greg Abbott has met the requirements of the office, he holds no official capacity.
40. In a time where executive orders have endangered millions of Texans lives by impairing their oxygen supply and forcing 49% of businesses to shut down entirely, thus creating an economic disaster by the issuance of said declaration, the ones issuing those orders must have impeccable credentials to be able to do so.
41. The claim of Eleventh Amendment immunity has no merit, because Plaintiff did not sue the State of Texas, but if Mr. Abbott had immunity, this Court, before it can dismiss the complaint for lack of jurisdiction over the subject

matter on the theory that Plaintiff's actions were, in substance and effect, against the State of Texas and thus barred by the Eleventh Amendment.

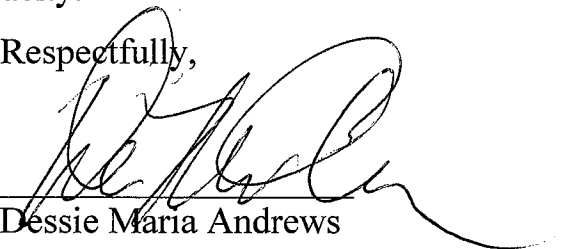
42. The plain reading of the complaint shows that Gregg Abbott was sued in his individual and official capacities, with the belief that Mr. Abbott had no official capacity as he had not taken the Art VI oath of office mandated by the Supreme Law of the Land.
43. After a federal court reviews the sufficiency of a complaint, before the reception of any evidence either by affidavit or admission, its task is a limited one.
44. The question is not whether the plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support her claims. *Scheur v. Rhodes*, 416 U.S. 232 (1974).
45. "In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)(footnote omitted).
46. Plaintiff has asserted that Gregg Abbott is a *de facto* governor operating under color of law and does not have the authority to issue emergency declarations which affect the entire population of Texas, which includes herself.
47. "One who makes a timely challenge to the constitutionality of the appointment of an officer who adjudicates his case is entitled to a decision on the merits of the question and whatever relief may be appropriate if a violation indeed occurred". *Glidden Co. v. Zdanok*, 370 U.S. 530, 536.
48. Although Greg Abbott is not a judge, to which Glidden refers, Abbott has issued judgment against Plaintiff in the form of his Declaration of Disaster.

THEREFORE, because this Court is sworn to uphold not only the U. S. Constitution, but the Organic Laws of the United States, Dessie Maria Andrews moves this Court to either hold a hearing or Order the evidence of Mr. Abbott's authority to act, which would consist of his filed Art. VI, Sec. 3 oath, to be placed in the record.

If Mr. Abbott cannot produce evidence that he timely took the mandatory oath, the Court must agree that Greg Abbott violated the mandate of the U. S. Constitution and is not an officer of Texas and incur the penalties that ensue from the failure to take the oath.

At that point, either by his own representation or that of a private attorney, Greg Abbott can defend himself in his personal capacity.

Respectfully,

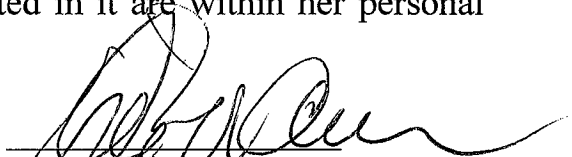


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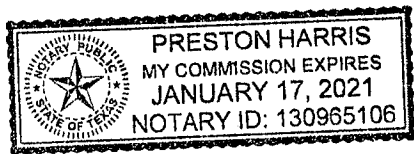
State of Texas }
 } ss
Travis County }

VERIFICATION

On this day, Dessie Maria Andrews appeared before me, the undersigned notary public. After I administered an oath to her, upon her oath, she said that she read the attached Objection and that the facts stated in it are within her personal knowledge and are true and correct.


Dessie Maria Andrews/Affiant

SWORN TO and SUBSCRIBED before me by Dessie Maria Andrews on July 3, 2020.




Notary Public

CERTIFICATE OF SERVICE

I, the undersigned, certify that on June 3, 2020, I sent a true and complete copy of the attached Objection by U. S. Postal Service to:

Benjamin L. Dower
Assistant Attorney General
Office of the Attorney General
General Litigation Division
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548



EXHIBIT 1

Dessie Maria Andrews Ph.D.
6715 Skynook Drive
Austin, Texas 78745
dessie.andrews@gmail.com

May 2, 2020

Governor Greg Abbott
publicrecords@gov.texas.gov

TEXAS PUBLIC INFORMATION ACT REQUEST

This is a TPIA request, all conditions precedent.

Governor Abbott:

On March 13, 2020, you issued an executive order limiting public gatherings, closing schools, etc.. After the first executive order Governor Abbot issued other orders, including shuttering of many businesses and lock down or shelter in place orders to the people of Texas.

I would like a copy of the following: All the data, documents and models that you relied upon to:

1. determine that the quarantine of healthy people had any impact on the spread of the Coronavirus; and
2. determine that social distancing had any positive or adverse effect on the spread of the virus; and
3. determine if the immune system of the general population is enhanced by forced isolation and unemployment; and
4. determine the long term lasting effects of joblessness on the general population; and
5. determine what the shutdown of all but essential businesses has on the Texas economy as a whole, and the projections that were modeled to weigh the problems generated by the shut down; and
6. give me a copy of or the cites for the laws, rules, regulations or Constitutional provisions empowering you to implement emergency orders.
7. A copy of your Certification of Election, Oaths and Statements, including the Art. VI oath and the Art. XVI oath and statement.

Thank you for your assistance.

Dessie Maria Andrews /s/

EXHIBIT 2



Dessie Andrews <dessie.andrews@gmail.com>

241-20 Andrews - Request for Clarification

3 messages

Public Records <publicrecords@gov.texas.gov>
To: Dessie Andrews PhD <dessie.andrews@gmail.com>

Tue, May 5, 2020 at 10:32 AM

Ms. Andrews,

This email seeks to narrow or clarify your request to avoid the production of and potential charges for responsive information that you are not interested in receiving. Additionally, clarifying or narrowing the scope of your public information request can assist the OOG in providing responsive information to you more quickly and potentially avoid the need for a decision from the Office of the Attorney General.

Your original request seeks seven categories of information related to executive orders. Please respond to the following requests for clarification or narrowing:

In order to attempt to better locate information responsive to your request, please clarify: Are you seeking information related to the executive orders generally, or about specific statements made by Governor Abbott? In either case, please identify the portions of the executive orders or statements made about which you seek information.

In category six of your request, you request copies of "cites of laws, rules, regulations or Constitutional provisions empowering [Governor Abbott] to implement emergency orders." This is a request for legal research or advice. Performing legal research or providing legal advice is not contemplated under the Public Information Act. Please clarify the information you seek in this category of the request that does not require the Office of the Governor to undertake legal research.

Alternatively, with respect to this category of your request, Governor Abbott's Executive Orders may be found at this link: <https://lri.texas.gov/legeLeaders/governors/displayDocs.cfm?govdoctypeID=5&governorID=45>, and each order specifies the authority under which the order is issued.

Your narrowing or clarification of this request does not preclude you from making future requests for additional information. After we receive your response, we can begin a search of our records for the information you are seeking. If the OOG does not receive a response from you by the 61st day after the date this email is sent, your request will be considered withdrawn. See Gov't Code § 552.222(d), (g). The withdrawal of your request does not preclude you from requesting the same or other information in the future. You can reach us at publicrecords@gov.texas.gov or 512-463-1750 with any questions.

Best regards,

Joseph Behnke

Assistant General Counsel

Office of the Governor

From: Dessie Andrews PhD <dessie.andrews@gmail.com>**Sent:** Saturday, May 2, 2020 7:42 AM**To:** Public Records <publicrecords@gov.texas.gov>**Subject:** 241-20 Andrews - Request for Information

[EXTERNAL SENDER] - Do not click on links or open attachments in unexpected messages.

 **TEXAS PUBLIC INFORMATION ACT REQUEST Governor.docx**

15K

Dessie Andrews PhD <dessie.andrews@gmail.com>
To: Public Records <publicrecords@gov.texas.gov>

Tue, May 5, 2020 at 4:47 PM

Mr. Behnke:

In answer to your request to narrow or clarify the information I seek, I will put my request in the simplest form possible.

Governor Abbott was confronted with pressure to close the State of Texas, i.e. order shelter in place lockdowns, and crash the Texas economy by shutting down industry in almost all businesses, which he did.

I would like to see, first of all, the data which he studied before taking action which deals with the following:

The number of deaths predicted which would be caused by Covid 19.

The number of people who would be forced to file for unemployment if he ordered the shut down.

The amount of revenue generated if the system was allowed to operate as usual, and the amount of the deficit which would result by shuttering businesses.

The data he examined to determine how many deaths would be caused by COVID 19 if he did nothing, as opposed to the number of deaths and injuries which would be the result of total quarantine.

I know those data are available, and I would hope that before he made his decision to yield to the pandemic hysteria, he would have studied those number very closely.

On May 1, 2020, the CDC announced that from the period February 1, 2020 thru April 11, 2020, the total number of deaths cause by COVID 19 in the whole of the United States was 11,356. The number of deaths in that same time period in which other forms of illness or disease was the cause of death, but the patients tested positive for COVID 19 before their demise was 54,200. That's 65,556 nationwide to date.

What number did the governor use to order the lock down in Texas?

Did he have empirical evidence that this would be a pandemic rather than a normal death rate from a flu like virus? I would like to see the data he relied on.

It is estimated that a 3 month lockdown in the United States will result in 11,100,000 deaths from suicides and homicides and other quarantine issues. The numbers for the estimated numbers of child and domestic abuse, etc., have not been calculated.

Did the numbers Governor Abbott review, if in fact he did review any, appear to be worse than the deaths caused by unemployment, despair, insanity, and boredom?

I WANT TO SEE THE EMPIRICAL DATA ON PROJECTED DEATHS CAUSED BY THE COVID 19 VIRUS TOGETHER WITH THE EMPIRICAL DATA ON THE COST TO THE PEOPLE OF TEXAS CAUSED BY QUARANTINE.

If Governor Abbott did not carefully review the consequences before he forced an economic bankruptcy of this state, he is incompetent.

If Governor Abbott was given incorrect data upon which he relied before he gave his order, I want to see the data upon which he made his decision.

It should be easy to fulfill this request. Either he had figures he studied or he did not.

If he did, I want to see the data he considere.d.

If he didn't I want him to say he did not consider data before making his determination.

That takes care of requests 1 through 5.

As to the 6th, the governor must be bound by the law, correct? For instance, the Texas Constitution, the Texas Government Code, the Duties, Requirements & Powers listed on <https://gov.texas.gov/governor-abbott/duties>. Which of the specific rules, laws or codes did he rely upon to issue an emergency executive order?

If there is not one, please indicate same.

I believe #7 is self explanatory, and I know upon request, copies of these documents must be furnished.

[Quoted text hidden]

Dessie Andrews PhD <dessie.andrews@gmail.com>
To: Thomas Maclean <perfectionrestoration@gmail.com>

Tue, May 5, 2020 at 4:47 PM

[Quoted text hidden]