

1 it. That's an oversimplification of it, but that was
2 prior to the Articles of Confederation, that was prior
3 to the United States Constitution. One person, one
4 vote. That's the underlying principle that this case
5 addresses. And in doing so, in doing so, there is a
6 difference between voting irregularities and fraud or
7 criminal conduct.
8 I just don't understand -- I apologize, but
9 I just don't get it when you have a document that says,
10 knowingly possessing this piece of paper, this envelope,
11 may be a crime. And of course, the Code specifies who
12 can do that and who cannot, yet people go out and prey
13 upon the disabled and the elderly, the very ones who
14 cannot really defend themselves, and they steal their
15 ballot. They are in unlawful possession of that
16 person's ballot.
17 When it comes to mail-in balloting or
18 absentee balloting, that voter's home is a polling
19 place. If these people had done what they did at these
20 homes at an official polling place at a school, church,
21 community center, what have you, they would have been
22 arrested on the spot, they would have been jailed, they
23 would have been arraigned, they would have had to have
24 posted a bond, they would have had their case reviewed
25 at least by, you know, whether it was a misdemeanant or

1 a felony of a grand jury. But because it happens at
2 someone's home, we stick our heads in the sand and we
3 ignore it.
4 It breaks my heart as it does I think
5 everybody in this room who has any lota of caring when a
6 voter -- any voter says, I'm not going to vote again.
7 And I've heard the Court say to these folks, that's not
8 the appropriate response, you should vote early, vote
9 always, you should make your vote -- cast your vote, but
10 you must do it alone or in conjunction with the
11 statutes, the Rule of Law.
12 Seven voters came forward in this room and
13 identified Ricardo Medrano, Jr. in Exhibit 54. I know
14 there were seven because I asked the court reporter to
15 run that exhibit number. That's where that comes from.
16 If anybody disagrees with that being an inaccurate
17 statement of the record, I stand corrected. Yet, that
18 young man sat in this courtroom, and I regret not having
19 him on the stand or facing the Court because it was
20 obvious -- it must be obvious that he was lying about
21 this entire voting process.
22 I prefer to argue and suggest to judges
23 what they can do as opposed to what they can't do, but
24 occasionally, I'm in a position where, on behalf of my
25 client, I must -- I must point out that, for example, in

1 Section 11 of Texjur where it discusses a vote, I found
2 this section to be particularly unlikely. It's the
3 forest. I may be a headnote lawyer, if you will, much
4 to my professor's chagrin. But in order to justify the
5 Court in rejecting the ballots of voters who have voted
6 fairly and in good faith to fill an office that the law
7 requires to be filled, nothing short of a clear
8 legislative command will suffice. That gets us to the
9 issue of mandatory versus directory.
10 Again, I'd like to argue that judges have
11 the discretion to do whatever they think is right, but
12 in this case, the legislature has said under Chapter 86,
13 which I handed to Mr. Wood, handed to the Court here
14 just a moment ago, marking and sealing a ballot. I went
15 back and checked the legislative history of this
16 section. It was and it is known as formerly Article
17 5.05, Subdivision 4A of the 1951 Election Code.
18 Being a headnote lawyer, I looked at the
19 annotations. Ironically, this is the absentee mail-in
20 ballot section, and the Court is well aware under the
21 Code of Construction and various interpretations of
22 statutes that when you look at this statute under
23 Section C, it can't be any clearer that there is an
24 order and there's a reason, a good reason, the best of
25 reasons, for this order. Seal the envelope, sign the

1 certify on the envelope.
2 When you look at the headnotes under this
3 section, which I've printed out and given to the Court,
4 there are two cases including Garza vs. Salinas and
5 Atkinson vs. Thomas. They're both from the '60s. They
6 interpret that section under the old Code. There's also
7 a Will Wilson opinion from 1960, I believe, as Attorney
8 General. That was tendered to the Court and Mr. Wood
9 also.
10 The legislature has made the manner of
11 casting an absentee ballot mandatory. Now we're into
12 whether or not a trier of fact really can ignore some of
13 these hair-splitting technicalities about whether or not
14 you seal the envelope first and then sign, or you sign
15 the envelope and then you seal it. I mean, does that
16 change the vote? And the answer's no, that doesn't
17 change the ballot. I'm not going to stand here and
18 suggest to the Court that that changes some piece --
19 another piece of paper in that envelope.
20 On the other hand, the reason for that is
21 to prevent tampering with that ballot and the
22 preservation of one person, one vote. One person, one
23 vote, which is what this case is about. When it comes
24 to assisting a voter, it is mandatory. It's not
25 directory. It's mandatory.

1 THE COURT: Five minutes, counsel.

2 MR. WYDE: When you take into account the

3 number of votes that were under the flap, when you take

4 into account the number of ballots that were assisted

5 with, arguably, intervening criminal conduct, I think

6 the Court is put in that position of saying, I cannot

7 condone that behavior, I cannot validate an election

8 where criminal conduct or mandatory provisions of Texas

9 law have been clearly violated, convincingly violated,

10 which brings me to my last point, disenfranchisement.

11 Why is it the person that doesn't follow

12 the law is the one that's supposedly disenfranchised

13 when those that do follow the law and take the high road

14 are the ones that become truly disenfranchised? We do

15 not have an unfettered right to vote in this country.

16 You must be 18 years of age. You must live in the

17 geographic region that's affecting that election. You

18 must be a United States citizen. You must register.

19 You must produce some form of documentation to suggest

20 you are a resident, if you do not have that

21 registration. You must vote during certain times. You

22 must vote in a certain manner. You must vote at certain

23 places. It is not unfettered. And frankly, absentee

24 voting was because people could not be present at that

25 time. Actually, absentee voting was for people who

1 couldn't be present on election day because we didn't
2 have early voting until roughly 15 years ago.
3 This is about one person, one vote, and not
4 disenfranchising those who follow the law versus those
5 who tolerate unlawful means to justify their end. And
6 everyone in this room is painfully aware after the
7 brutality of law school or what have you, the means can
8 only justify an end. The end can never justify the
9 means, no matter how noble, because once we go down that
10 path, we're no longer following the Rule of Law, and in
11 that case, there's no need for one person or one vote.
12 So for those reasons, we ask this Honorable
13 Court to take the time before it puts the seal of
14 approval of arguably the most powerful position in the
15 state on this election after reviewing whatever
16 documentation the Court needs to feel like it's done its
17 lawful duty, whether it means cracking open ballots or
18 not, even though they cannot be traceable to who they
19 voted for, we're convinced -- we're convinced beyond any
20 question that this election should be void and a new
21 election ordered with the light of day to allow those
22 people who follow the Rule of Law the opportunity to
23 truly exert their will which is what this is really
24 about also, the exertion of the people's will as to who
25 should occupy that office.

Thank you so much for your time.

THE COURT: Thank you'all. I'll be looking

forward to getting the briefs on it. Let me get

counsel, if you don't have it already, my e-mail address

and we'll get that to you in a moment here. Get that to

me and also I'll give you my fax number. Actually, I'll

prefer it e-mailed, I think, if you don't mind.

I want to thank all the participants in

this. This is a very important right that our country

affords our citizens, and I do not take it lightly. The

fact that we have heard testimony about irregularities

that have occurred, I think that regardless of what this

Court's ruling is, that the fact that this suit has been

brought is very important to getting the word out to the

neighborhood as to the importance of following the rules

and of making people that perhaps were not aware, making

them aware of what is required.

(End of Proceedings)

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REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF DALLAS)

I Larissa L. McPhearson, Certified Shorthand Reporter in and for the State of Texas, do hereby

certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and -numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is \$ _____ and was paid by Mr. Dan L. Wyde.

WITNESS MY OFFICIAL HAND this the 6th day of September, 2010.

Larissa L. McPhearson

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