

Lone Star Project ... Fighting Back With Facts

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Court Decision Will Make Voting Harder For Elderly Texans

Yesterday, District Court Judge T. John Ward handed down a disappointing ruling that upholds Texas restrictions on the rights of elderly and disabled voters to seek assistance in casting their ballots. The Court ruling upholds a Texas law that restricts the number of absentee ballot applications that a person may witness. Unfortunately, this decision may be the first in a series of cases that, relying on the recent [Indiana Voter ID decision of the US Supreme Court](#), restrict the rights of voters and suppresses voter turnout. Clearly, the recent Supreme Court appointments by the Bush Administration stand as a serious threat to full and effective participation by eligible voters, and an obstacle to free and fair elections. Below is a statement from J. Gerald Hebert, lead attorney for the plaintiffs in the case.

The Campaign Legal Center

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Absentee Ballot Decision Will Make Voting Harder For Elderly Texans: Statement of J. Gerald Hebert, Campaign Legal Center Executive Director

“Today’s decision in Willie Ray v. State of Texas by a federal court in Marshall, upholding a Texas law that restricts the number of signatures on absentee ballot applications that a person may witness is extremely disappointing. The decision will regrettably leave in place a significant obstacle between elderly and disabled Texans and their right to vote and will serve ultimately to disenfranchise many of them. The plaintiffs who brought this case are among the first victims of the Supreme Court’s decision in the Indiana Voter ID case (Crawford v. Marion County).”

Excerpts and commentary on the decision follow:

The Court, claiming to follow the Supreme Court’s Crawford decision, held that the one witness restriction in Texas did not violate the Constitution. The federal court made this finding even though the court concluded:

The evidence in support of the plaintiffs’ claims includes testimony concerning the impact § 84.004 has had, and will have, on voters and those who assist voters. For example, Willie Ray notes that she has been unable to serve as a witness to multiple voters who have asked for her assistance because of [the challenged law] § 84.004. Ms. Ray suggests that if she (or someone similarly situated) is unable to witness a signature for an application, the applicant likely will not seek further assistance and

will not vote. (citation omitted). Plaintiff Ken Bailey makes similar statements in his declaration.

The federal court also concluded that “[t]he plaintiffs offer their deposition testimony which includes logical deductions that § 84.004 has the effect of decreasing the numbers of volunteers willing to assist with the early voting ballot application.” The court also noted that it “appreciates the logical conclusion that precluding volunteers from witnessing more than one ballot application could reduce voter participation to some extent.”

Despite these findings and observations, the court concluded that “the record lacks concrete evidence that § 84.004 has had an appreciable impact on elderly and disabled voter participation. On this record, the court cannot conclude that § 84.004 has had a ‘chilling effect’ on voters or that § 84.004 has ‘disenfranchised’ the voting public to any appreciable extent.”

The district judge also rejected the plaintiffs’ claims that the one witness restriction was inconsistent with Section 208 of the Voting Rights Act. Section 208, as the court noted, gives the right of a voter to be assisted at any point in the voting process by a person of the voter’s choice. The court’s ruling that the one witness rule did not on its face interfere with the right to choose one’s assistor included the following bizarre observation: “Under the plaintiffs’ proposed construction, the State would be forced to honor the voter’s choice to have an incarcerated family member witness his or her application for an early voting ballot. The State’s position is that Section 208 empowers the voter to choose the person who will assist him or her, but the voter is not entitled to his or her preferred choice if that choice is reasonably restricted by the state. In the State’s view, the protection afforded the voter by Section 208 is simply that the voter is not required to accept another person’s choice.”

A settlement of most of the claims in the lawsuit reached in late May 2008 is not affected by today’s ruling. The Campaign Legal Center represents the plaintiffs in the case.

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