

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

U.S. COURT OF APPEALS

FILED

NOV 03 2006

No. 06-41573

2:06CV385

CHARLES R. FULBRUGE III
CLERK

WILLIE RAY; JAMILLAH JOHNSON; GLORIA MEEKS; REBECCA
MINNEWEATHER; PARTHENIA MCDONALD; WALTER HINOJOSA; TEXAS
DEMOCRATIC PARTY

Plaintiffs - Appellees

v.

GREG ABBOTT; Attorney General of the State of Texas; ROGER WILLIAMS, Secretary
of State for the State of Texas

Defendants - Appellants

Appeal from the United States District Court for the
Eastern District of Texas, Marshall

Before JOLLY, DENNIS, and CLEMENT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that appellants' motion to stay the Preliminary Injunction filed in
the Eastern District of Texas, Marshall Division on October 31, 2006, pending appeal is
GRANTED.

IT IS FURTHER ORDERED that the appellants' motion to expedite the appeal is
DENIED.

JAMES L. DENNIS, Circuit Judge, concurring:

It is difficult for me to say that the district court abused its discretion in its carefully

drawn preliminary injunction of what appears to be the state's overly broad criminalization of conduct intended to assist disabled voters and its resulting disqualification of disabled voters' mail-in ballots. On the other hand, the statutory provision at issue does not totally deny any class of persons the opportunity to vote; it only threatens to disqualify, after the fact, the mail-in ballots of disabled voters on a pretextual basis and without a showing of fraud or mishandling. Consequently, at this point the scope of disenfranchisement and interference with protected political activities that the ballot chain of custody requirement may produce, as well as the scope of the fraudulent practices that allegedly justify that requirement, are somewhat speculative. "Allowing the election to proceed without enjoining the statutory provisions at issue will provide the courts with a better record on which to judge their constitutionality. . . . Given the importance of the constitutional issues, [this panel] wisely takes action that will enhance the likelihood that they will be resolved correctly on the basis of historical facts rather than speculation." Purcell v. Gonzalez, --- S. Ct. ---, 2006 WL 2988365 (2006) (Stevens, J., concurring).