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U.S. DISTRICT COURT

IN THE UNITED STATES COURT OF APPEALS, U.S. COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

TX EASTERN-MARSHALL

FILED

NOV 03 2006

BY

No. 06-41573

CHARLES R. FULBRUGE III  
CLERK

DC # 206-CV-385

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).