

From: DASEILER@SolanoCounty.com
To: "elec_net" <elec_net@lyris.shasta.com>
Date: 7/11/2006 4:41:01 PM
Subject: RE: Court of Appeal Preserves Fax Voting

Judith,

Thanks for this good news as well as your clear description of the ruling and its impact.

Deborah

From: Carlson, Judith [mailto:jcarlson@ss.ca.gov]
Sent: Tuesday, July 11, 2006 3:10 PM
To: elec_net
Subject: Court of Appeal Preserves Fax Voting

Update: Bridgeman v. McPherson

Oral argument in this matter was held on June 26, 2006, before the Third District Court of Appeal in Sacramento, Justices Sims, Raye, and Hull presiding. Deputy Attorney General Doug Woods argued for Appellant McPherson, and Scott Rafferty argued on behalf of Respondents Bridgeman, et al. The panel was very engaged in the proceedings, and asked questions of both counsel.

Today, July 11, 2006, the court issued its opinion, reversing the decision of the lower court. The opinion has been certified for publication. The court concluded that "the constitutional guarantee of a secret ballot must be balanced against the constitutional right of voters to cast a vote," and that "given a choice between fax voting and not voting at all, citizens should be able to choose to vote by fax and to waive their right to a secret ballot." The court further found that the Respondents had failed to present substantial evidence supporting their allegations of improprieties in the fax voting system.

The court reasoned that the history of Elections Code section 3103.5 demonstrates that the legislature enacted the statute based on a desire to allow overseas voters to vote "in circumstances where they would otherwise be disenfranchised." The court concluded that "we should

respect the Legislature's determination that fax voting is necessary to allow some voters overseas to vote in California. This is constitutional." In addition, the court found that the State's regulatory interest in requiring the oath is clear, in that the oath ensures that inadvertent disclosure of the ballot during the fax process would not subject the votes on that ballot to disqualification.

Possible Further Proceedings:

Any petition for rehearing by the Respondents must be filed within 15 days from the date the opinion was issued, and would therefore be due by July 26, 2006. (Cal. Rules of Court, rule 25.) Should the Respondents wish to file a petition for review with the California Supreme Court, they must do so within 10 days after the Court of Appeal decision is final. (Cal. Rules of Court, rule 28(e).) Here, the decision will be final 30 days from today, August 10, 2006. (Cal. Rules of Court, rule 24.) Any petition for review must therefore be filed between August 10, 2006 and August 20, 2006.

Impact on County Election Officials:

The court's decision means that county clerks/registrars should continue to operate as they have in the past with regard to faxed ballots for the upcoming general election in November. This will be the case even if a petition for rehearing or review is filed, unless such a petition results in a reversal of the court of appeal's opinion prior to the election, which is unlikely.

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