

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Dan Arthrell	)	
Petitioner,	)	
v.	)	
	)	No. MA-110590
The Oklahoma State Election Board, et al;	)	
and	)	
	)	
Tulsa County Election Board, et al;	)	
and	)	
	)	
Honorable Damon Cantrell, Tulsa County	)	
District Judge.	)	
	)	
Respondents.	)	
	)	
and	)	
	)	
Betty Skalla, Lisa Porter, Valerie Jacobi	)	
and Lynda Jacobs,	)	
	)	
Intervenors.	)	

BRIEF AMICUS CURIAE OF THE

LEAGUE OF WOMEN VOTERS OF METROPOLITAN TULSA

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*INTEREST OF AMICUS CURIAE*

The League of Women Voters of Metropolitan Tulsa (League) is a nonpartisan organization whose core mission is to promote an open governmental system that is representative, accountable and responsive. To that end, the League seeks to protect the right of all eligible citizens to vote. The League perceives any attempt to limit or nullify a citizens's legitimate participation in the electoral process as a threat to a fundamental constitutional right, and the League holds that this perception accords with the presumption of the citizenry in our democracy. The facts of this case have therefore garnered the attention of the League and precipitated its request to submit this Brief Amicus Curiae.

Rather than repeating arguments raised by the parties, the League shall address issues unlikely addressed by the parties. The League particularly wishes to remind the Court of the compact between the people and its government and urge that insuring the right to vote and have that vote counted is paramount to any technical argument that can be asserted. The League will urge the Court to view the facts of this matter in a manner to reflect the undisputed will of the people.

SUMMARY OF ARGUMENT

Core to the principal of democracy, fundamental to individual freedom, and the foundation of State of Oklahoma and the United States of America is the constitutional right of eligible citizens to vote. Rather than focusing on a very technical legal argument, the League simply asks:

## Was the vote counted for every person who properly cast a ballot?

The unique circumstance in determining the result of this special election can obscure the simplicity of the solution. The League makes no allegation that those involved engaged in dishonorable activity, yet a violation of a fundamental right occurred because the core principal of one person, one vote was not followed. Intuitively, the likelihood of mistake is higher when new voting machines replace those that have been used for decades, as was the case in this election. Mistake rather than a voting irregularity or fraud is what is at issue in this matter.

The solution is to count every vote cast by every legitimate voter. To do otherwise breaks the bond, compact or contract that government has with the governed in a democracy. It disenfranchises a citizen who properly cast a ballot, a citizen who asked for his or her voice to be heard in the political process. The notion of “one person, one vote” remains fundamental only if each vote cast is counted and this court insures that the vote of every Oklahoman who chooses to cast a ballot in an election is counted. Otherwise, the process becomes a “sham election.”

### *ARGUMENT*

#### I. Failure To Tally And Record All Legal Votes Disenfranchises Voters and Undermines Democracy

The right to vote freely for the candidate of one’s choice is the essence of a democratic society, and any restrictions on that right strike at the heart of

representative government. *Reynolds v. Sims*, 377 U.S. 533, 555 (1964). The right of a qualified elector to vote and to have his vote counted is basic and fundamental. *Porter v. Oklahoma City*, 1968 OK 144, 446 P.2d 384, 391. These basic tenets of a democracy form the backbone of the compact the governed have with the sovereign.

A mistake by an election official to bring all of the ballots cast in the election to be recounted must not be allowed to prevent an accurate and fair determination of the will of the majority. Supplemental Affidavit of Elaine Dodd, ¶5.

When those missing ballots are found, and there is absolutely no evidence that the ballots were illegally cast or the ballot box was tampered with, those ballots must be counted. *Ibid* at ¶¶4,5. Not count those ballots is a violation of the elector's fundamental right to vote.

The resolution of this matter is to require that all legally cast ballots be counted.

II. There Should be a Rebuttable Presumption That The Voting Machine Provides An Accurate Tabulation

The ballots in question before this Court were not counted because the ballots were not included in the sealed "transfer case". It has been proven that the ballots in question were legally cast, correctly tabulated by the voting machine, and properly preserved, but left behind in the voting machine when the ballots were moved to the transfer case. Stipulation of Facts at ¶¶15, 19.

In order to continue the ballots controlling as evidence, it must appear that they have been preserved in the manner and by the officers prescribed by the statute, and while in such custody, they

have not been exposed to the reach of unauthorized persons as to afford a reasonable probability of their having been changed or tampered with. *Turlington v. Summers*, 1933 OK 54, 18 P.2d 865, 867.

The Turlington test having been met, a problem arises if it is presumed that all ballots are in the transfer case when the ballots are transferred from the voting machine bin to the transfer case. This presumption does not account for possible errors of omission by precinct officials.

The better rule would be to presume that the voting machine tabulations are correct. This presumption would mean that if a recount of votes [is] to prevail over the [voting machine tally as submitted by the precinct officials], it must appear that the same ballots and the same number of ballots were counted in the recount as cast in the election. 29 C.J.S. Elections § 490. Under such a rule the Tulsa County Election Board (Board) would have been required to diligently and thoroughly make a search for the missing ballots before voting to certify the election. Further, had the Board been required to diligently and thoroughly search for the missing ballots this matter would not be before this Court.

Again, the resolution of this matter is to require that all legally cast ballots be counted.

#### CONCLUSION

Did the Tulsa County Election Board count every legitimately cast ballot in the election under review by this Court? The answer is a clear and resounding no! The “DNA” of our democracy is the right of every qualified voter to have the ballot he or she casts in an election counted. To not properly

count a single ballot is tantamount to telling a person condemned to death that the court refuses to review exonerating DNA evidence that is now available. The result of such refusal produces an unjust result that undermines the credibility of the legal and political system. This kind of result tells its citizenry that truth and fairness are subordinate to, and an acceptable casualty of, form over substance.

There is a simple solution to the matter before this Court. Order that all ballots be counted.

Respectfully submitted by:

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Ronald D. Wilkinson, OBA #15157  
Post Office Box 2207  
Tulsa, Oklahoma 74101-2207  
Telephone: (918) 361-9652

Counsel of Record  
Attorney for Amicus Curiae

League of Women Voters of  
Metropolitan Tulsa

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Brief Amicus Curiae was delivered by electronic mail on April 19, 2012 to the following:

Robert B. Sartin  
Barrow & Grimm  
110 West 7th Street  
Suite 900  
Tulsa, Oklahoma 74119  
918-584-1600  
918-810-1601 cell  
[sartin@bggg.com](mailto:sartin@bggg.com)

Robert McCampbell  
Fellers Snider  
Chase Tower  
100 N. Broadway, Suite 1700  
Oklahoma City, OK 73102-8820  
405-239-7252  
405-990-3307 cell  
[RMcCampbell@FellersSnider.com](mailto:RMcCampbell@FellersSnider.com)

John David Luton  
Chief Civil Assistant  
Tulsa County District Attorneys' Office  
500 S. Denver  
Tulsa, OK 74103  
918-596-4814  
[jluton@tulsacounty.org](mailto:jluton@tulsacounty.org)

M. David Riggs  
502 West Sixth Street  
Tulsa, OK 74119  
918-587-3161  
918-587-9708 fax  
[driggs@riggsabney.com](mailto:driggs@riggsabney.com)

Steven L. Cortes  
709 NW 27<sup>th</sup> St.  
Oklahoma City, OK 73103  
405- 820-1387  
[cortesokc@gmail.com](mailto:cortesokc@gmail.com)

D. Gregory Bledsoe  
1717 S. Cheyenne Ave.  
Tulsa, OK 74119  
918-599-8123  
918-519-9983 cell  
918-582-7830 fax  
[bledsoe@aol.com](mailto:bledsoe@aol.com)

Laurie J. Phillips  
1408 S. Denver Ave.  
Tulsa, OK 74119  
918-587-8800  
918-740-2755 cell  
[lauriephillips@swbell.net](mailto:lauriephillips@swbell.net)