

S128311
IN THE SUPREME COURT OF CALIFORNIA

En Banc

THERESA BRIDGEMAN et al., Petitioners,

v.

KEVIN SHELLEY, as Secretary of State, etc., Respondent.

OCT 15 2004

Election Code section 3103.5, which became effective September 27, 2004, requires any eligible overseas voter who wishes to cast his or her ballot by facsimile transmission to sign a "voter's oath" that includes a statement "acknowledg[ing] that by returning my voted ballot by facsimile transmission I have waived my right to have my ballot kept secret." In the present original writ proceeding, petitioners contend that this portion of section 3103.5 violates the California Constitution and the federal Help America Vote Act. (See Cal. Const., art. II, § 7 ["Voting shall be secret."]; 42 U.S.C. § 1973ff-1(b)(5).)

Respondent Secretary of State is ordered to show cause before the Sacramento Superior Court, after the results of the November 2, 2004 election have been certified, on a date to be set by the superior court, why a writ of mandate or prohibition should not issue, restraining Respondent from enforcing the challenged portion of section 3103.5.

In view of the imminence of the November 2, 2004 election, and because the voter's oath set forth in section 3103.5 contains additional elements that are unchallenged, we conclude that it is impossible, as a practical matter, to provide interim relief with regard to the upcoming election without engendering undue confusion and uncertainty in the election results. For this reason, the request for an interim stay is denied.

The superior court shall determine the dates upon which the return and the reply shall be filed, and shall resolve the matter in a timely manner so that a final determination of the issues can be reached well in advance of the next statewide election.

George

Chief Justice

Associate Justice

Baxter

Associate Justice

Associate Justice

Associate Justice

Brown

Associate Justice

Moreno

Associate Justice