

Serious as a Heart Attack

by John Shull

Until recently, constitutionalists have overlooked the significance of elections and election laws. However, elections are the critical, almost sacred, keys to political power and maintenance of the Constitution. Unfortunately, Americans are so confident that our “sacred” democratic elections are honest that not one man in 10,000 feels an urge to study election law. Our collective confidence and consequent ignorance renders us extraordinarily vulnerable to vote fraud.

According to Louisiana attorney, M. Dale Peacock, vote fraud, “negates the good citizens’ rights to vote. It strikes at the most fundamental American right: not to be taxed without duly elected representation. What our forefathers fought for — free elections — is lost when select precincts do not, at least, guarantee that voters are lawful. It is a total destruction of the right to vote.” How serious is vote fraud? As you’ll see, one judge apparently thought the issue so serious, he succumbed to a heart attack — hence this article’s title.

Moreover, vote fraud may be more common than most Americans suppose. For example, a year after the 1996 elections, two Congressional seats are still contested based on voter fraud.

In the House, Republican Bob Dornan challenged the voting in the 46th congressional district of California by showing that more than 300 voters (out of his opponent’s winning margin of 984) were illegal. This case may

go to court and the 46th district’s seat may not be determined before the 1998 elections.

In Louisiana, the U.S. Senate is investigating Mary Landrieu’s narrow (5,788 vote) victory over Woody Jenkins for the Senate. Jenkins’ allegations illustrate the variety of vote fraud tactics: individual voters casting up to fifteen votes; voting machines not registering votes for Jenkins; 3,169 voters addresses listed as abandoned public housing; and in one precinct, there were 7,500 more “phantom votes” cast than there were voters. (According to Congressman Billy Tauzin, “Although the nationwide voter turnout was a paltry 49%, in New Orleans, it was a robust 107%.”) Based on Jenkins’ allegations, sixty-eight people have been indicted. If vote fraud is proved, the Senate Rules Committee may declare the Senate seat vacant.

Are these 1996 vote fraud allegations unique? Hardly.

In 1984, the Indiana Secretary of State declared that Republican Congressional candidate, Richard McIntyre, won by thirty-four votes over his Democratic opponent. Nevertheless, the Democrat-controlled US House awarded the seat to the Democrat Frank McCloskey in what Rep. Bill Thomas (R-CA), described as “nothing short of rape.”

In the 1960 Presidential election, John F. Kennedy defeated Richard Nixon by just 113,000 votes, due in part to Chicago Mayor Richard Daley’s ability to

“deliver the vote” from a number of voters who were registered but dead.

Point: Although the mainstream media doesn’t talk about it too much, vote fraud is common in American politics.

Here’s the story of one man who’s personally experienced vote fraud, fought back, and proved once again that just one determined man can make a big difference. In 1996, John Shull entered the Republican primary election in San Antonio, Texas, to run for congressional office in the 20th district and was defeated fairly. Or so it seemed, until he launched a personal investigation into election law and procedures. As a result, Shull uncovered a systemic vote fraud problem in San Antonio that could be happening anywhere in the United States.

Mr. Shull’s investigation into vote fraud started in 1996 when he 1) bought a mailing list of registered voters from his county election office; 2) sent campaign fliers to all those registered voters by First Class mail; and 3) received a substantial number of his campaign fliers back in the mail, marked “addressee unknown”, “no such address” or some such. Rather than simply discard the returned fliers, he counted them, analyzed them, and realized the voters registration list he’d bought contained substantial errors.

At first, Mr. Shull assumed that the voter registration errors (and other problems he’d seen in the election pro-

cess) were largely “innocent” and caused by government incompetence rather than intentional vote fraud. He sued Bexar County for damages he’d experienced due to the inaccurate voter list and other regularities. In court-ordered mediation, Mr. Shull agreed to settle with the County for repayment of his court costs and a job working as an election consultant to help the County eliminate the voting irregularities he’d uncovered. Note that Mr. Shull wasn’t simply suing for “quick” monetary damages — he sued for a job in which he would work to help correct the problems he’d seen and suffered. This settlement would’ve cost Bexar County about \$50,000.

The local District Attorney agreed to the settlement, but seventy-two days later, reneged for reasons unknown. At this point, Mr. Shull began to suspect the voting irregularities he’d discovered might not be so “innocent”, and began a serious, determined investigation into Bexar County voting procedures. To date, Bexar County has done virtually nothing to investigate Mr. Shull’s allegations of vote fraud, but has now spent almost \$500,000—with no end in sight — trying to stop Shull from prosecuting his case.

Here’s Mr. Shull’s introduction to his story:

“I filed my election contest case on April 19, 1996 – almost two weeks after the Republican primary election. My suit involves outright voter fraud, official refusals to provide public information concerning the election, and public accountability. My suit establishes direct liability for the officials involved and is headed for a jury trial.

“**Voter fraud:** In my primary election contest, over 1000 valid voters weren’t counted (apparently including my own family) with over 40 of the 267 voting precincts not even recording one vote. 150 “voters” decided to vote from invalid or nonexistent addresses.

“**Public information:** since filing my case, I’ve made continuous attempts to obtain public record information on the Republican Primary election for the

20th US Congressional seat held on 9 April 1996. However, due to strenuous efforts by the local DA’s office, almost no information has been made available through either court discovery or the Texas Open Records Act. There have been over ten court hearings on discovery alone (a “conspiracy of concealment,” one might say). Some believe many of the statutorily required records can’t be provided because they don’t exist.

“**Public accountability:** Local election officials have not complied with or enforced the state election code. I estimate that almost 40% of the state election code has been ignored. Noncompliance with state election code requirements constitutes fraud. Examples:

“1) **Tax Assessor Sylvia Romo** (custodian of the voter registration file and heart of voter authorizations) can’t eliminate the “dead people” from the file.

“2) **County Judge Cyndi Krier** sat on the County Commissioners Court and oversaw the allocation of resources for elections. She also sat on the County Election Commission — the only audit mechanism for this same process. Although a State District Court has already ruled that Bexar County is liable, Judge Krier (top Bexar County official) says she is not in charge nor responsible.

“3) **County Clerk Gerry Rickhoff** denied an Open Records Act request for election information with a “school news media” exception. Like Judge Krier, Rickhoff sat on the County Election Commission and was responsible to enforce state election code requirements.

“4) **County District Attorney, Steve Hilbig** is largely responsible for the integrity of the election process. Nevertheless, he hasn’t prosecuted one person for vote fraud—including the “duplicate” voters easily identified in the voter registration records. However, without investigating my allegations, he vigorously resists prosecution of my case. For example, despite a court order, he is directly responsible for preventing my case from going before a jury on October 14, 1996 – less than one month before the general election.

“Judging from our public officials’ denials of personal responsibility,



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our election process runs itself and is independent from the officials we elect or appoint to oversee it. But if they are not accountable for violations of election laws, who is?"

Deceptive trade practices?

According to Texas law, in a vote fraud suit, the only parties who can sue or be sued are the actual candidates. In other words, if Mr. Shull alleges vote fraud, he can normally sue only whichever candidate he believes is responsible.

Nevertheless, Mr. Shull filed his suit under Texas consumer-protection legislation called the "Deceptive Trade Practices Act". This Act was designed to help consumers settle problems with businesses without having to go to court. Businesses are "encouraged" to reach an out-of-court settlement with dissatisfied customers because— if they "stonewall" and force the customer to sue in court—the consumer must only present enough evidence to overcome a very low standard of proof to win his case. If (when) the customer wins, the businessman will be ordered to pay all

attorney fees plus TRIPLE whatever monetary damages the customer suffered.

For example, suppose you paid \$500 for some plumbing that you later realized was shoddy, and threatened to sue the plumber under Deceptive Trade Practices. If the plumber's smart, he'll either correct the problem at no cost or refund all or part of the \$500. If he doesn't settle and the case goes to court, the plumber will almost certainly lose and wind up paying his attorney's fees, your attorney's fees, plus \$1,500 (three times his original fee) to you.

Mr. Shull's use of Deceptive Trade Practices to sue for election fraud is an exciting application of the law. As you'll see, his suit is based on the idea that consumer's are protected against not only shoddy products or services, but also "processes". In Mr. Shull's case, he is suing over defective election processes, but I can't help wondering if this same consumer protection argument might also work on the regulatory and judicial "processes" used by traffic police and municipal courts which enforce traffic law. This possibility might hold

true in any state that has comparable consumer protection legislation.

Here's an edited excerpt from Rick Donaldson's and Alfred Adask's June 2, 1997, interview of John Shull on KPBC radio (Mr. Shull's comments are in normal text; mine and Rick's are italicized):

Why did you use Deceptive Trade Practices as part of your legal strategy?

Because — in an exclusively election-based case — the election code invests the sole power in a district judge to be the finder of law and fact.

Exclusively?

Yes. No juries. To get around that barrier, I had to add some other claims.

So you filed your case under the Texas consumer-protection law called the Deceptive Trade Practices Act . . . who did you file against?

They've argued that, as implied in the election code, the only proper party to the suit was my opponent in the primary. However, there is an "out" since the court permitted me to add any other major person that had something to do with the contest. So I sued Bexar County Elections, its administrator, Ed Navarro, Bexar County (this is the first time a county has been sued in an election controversy), and the candidate that I ran against in the Republican primary, James Walker.

Bexar County Elections was an administrative agency created to supervise elections by consolidating voter registration and actual conduct of the election into one office. However, as a result of my suit, and an ensuing FBI investigation, that agency has been dissolved.

So your suit has already caused one county agency to disappear?

It seems so.

You sued because they sold you a defective voter registration list?

There are two causes of action under Deceptive Trade Practices Act (DTPA): First, if someone misrepresents the attributes of a product, service, or process — they're subject to DTPA. There is legal precedent that the output from a computer has been construed by Texas law as being a "tangible product" from, for instance, a county and is therefore compensable under DTPA. The data

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that the Bexar County computers generated is therefore a “tangible product” with the “attribute” of supposedly listing *all* eligible voters.

Many candidates buy mailing lists and send their political fliers by inexpensive Bulk Mail. Bulk mail saves money, but if the address is invalid, the flier is not returned to the sender – it’s simply destroyed by the Post Office. However, I sent my postcards soliciting votes by First Class mail, so any that were not properly addressed were returned to me, giving me third-party verification that the Bexar County voter list did not include “all” and “only” eligible voters.

The second part of the DTPA is the “process”. In this case, *election* “process”. I’m alleging that as a candidate, I was induced into running for a public office by a guarantee and implicit contract with Bexar County (which administered the election) that they’d conduct an election process that was fair, consistent, standardized and with a predictable results.

That’s a powerful strategy that might apply in any State that has a Deceptive Trade Practices Act or some similar variety of consumer protection legislation.

It sure could. Under other provisions of the election law you don’t have to be a candidate, but can even file suit as a *voter*. For instance, in the Texas election code there’s a proviso that says, “any person *without exclusion*” who feels he’s been harmed or will be harmed by the system, can seek injunctive relief. That means that you or anybody can go into court and say, “Hey wait a minute, let’s shut this election process down.”

You’re saying anyone — even if he’s not registered to vote — who thought he’d be adversely affected by the election process, could seek an injunction to stop the election? That opens a lot of doors.

Seems so, but remember, this has not yet been tested in court.

However, I did test the injunctive relief portion on 28 October, 1996. I sought to enjoin the November general election because the number of “questionable” votes in my election contest



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exceeded the number of votes by which I lost, by over 100% (in fact, I’ve got 2,000 votes that could be thrown out). Therefore, since I was sure to prevail, I reasoned that the court would be forced to enjoin the general election in Bexar County. However, State Judge Andy Morales ruled against my motion, and refused to provide any reason for doing so on the record.

If you should have been the Republican nominee from the 1996 primary election, is the election of the Democrat Henry Gonzales in the November, ’96 general election invalid? Does your suit compromise the validity of the votes Gonzales cast in Congress?

Yes! And guess what? I’ve had two judges refuse to make decisions. They’ve abated; they’re trying to dismiss the primary election contest issues of this case as “moot”. Normally, once the November general election has been held, the previous primary election is legally “moot” and no longer subject to challenge.

However, the judge has a problem. In the election code there are 14 provisions — including injunctive relief —

which allow the court *without time constraints* to still adjudicate in law. And the number one exception in Texas to “mootness” is “public interest”. And guess what the Texas Constitution says about voting rights? “*Utmost public interest.*” It’s the number one exception, guys.

I’ll bet you’ve got a lot of people’s attention down there.

Believe it or not, everyone’s running for cover. Nobody wants to talk to me. Nobody wants to do anything. I’ve already had one judge have a heart attack. State Judge Andy Morales. It’s only conjecture, but the word is that when he got my writ of mandamus to overturn his previous denial of my motion for injunctive relief, he had a heart attack.

How’s he doing?

Very well, and I wish him the best.

Vote fraud is easy

In my election, I could’ve taken my 41 workers on early voting and had every one of those guys vote at each one of 47 voting places and “created” over 1500 votes. So if vote fraud is intended,

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vote fraud can be committed.

In fact, Texas Secretary of State Tony Garza sent me a letter that implied "vote early and vote often" was an established Texas tradition. Because effective government oversight is minimal, the legitimacy of the election process depends entirely on each voter's personal integrity.

For example, the election code requires voters who show up at a polling places without their voter registration cards to make written statements of their identify and eligibility to vote.

But guess what? We're still looking for those statements. Apparently, the election judges just said, "OK, if you say you're 'John Doe', that's who you must be - go ahead and vote."

Another thing; there were 6,081 votes recorded at the time of election, but 96 days later, the County's voter registration list for that same election, indicated that 7,113 people voted. That means over a thousand voters—about 15%—just disappeared from the original vote total. There's never been a recount in Texas that's caused the same result.

How many recounts were there?

The Secretary Of State indicates over 100. If y'all recall, in 1994 we had the Judge Littlejohn versus Judge Spears race where they announced the winner, and she went on a cruise. Then they had a recount and when the other guy won, he went on a cruise. Then there was another recount, and it turned back to Littlejohn again.

I honestly think that today's elections are being stolen — and I stress the word "stolen" — by design or by ignorance before you actually cast a vote.

How widespread is vote fraud?

My experience is limited to Texas and Bexar County, but we've found systemic problems, including mail-in ballots, retirement home ballots and (because the only requirement for getting on the voter registration list is a post-card) inflated voter registration lists that include "valid" voters who don't even exist.

Didn't you discover that San Antonio sent voter registrations to over 600 nonexistent streets? The registrations can't possibly be mailed back to these "streetless" applicants.

They blame it on the National Voter Registration Act (the "motor voter" law) which requires anyone who has a non-deliverable address to stay on the registration list for two federal election cycles.

Even nonexistent voters must be kept on the voter registration lists for a minimum of two elections?

Unless a specific name is challenged and they can't verify it, Yes. There've been almost no challenges of voters in Bexar County since 1976.

Because there are so few election

challenges, everyone assumes voting is one of the few governmental processes that are still essentially legitimate. But, in theory, Republicans could "pack" a voter registration list with phantom Republicans, and the Democrats could counter by packing the list with phantom Democrats, and entire elections might be decided by nonexistent voters. The "silent majority" might be outvoted by a computerized "nonexistent majority" reminiscent of elections in the former USSR.

The real scary thing is the relationship between voter registration and jury summons. Down here in Bexar County, jurors are summoned from a combined list of registered voters and licensed drivers, but the County wastes nearly \$5,000 a year serving and enforcing undeliverable jury summons.

Have any of the phantom voters who "live" on the 600 nonexistent streets showed up for jury duty? All these fictitious names might be used to "pack" particular juries as well as elections.

I don't know; we haven't tested that out. But see, first they have to get the summons to you, and if it's not deliverable since the address is bogus

What I'm leading up to — suppose certain elements in government wanted to "insure" a particular verdict was reached in a particular trial. Wouldn't it be possible to "summon" some phantom jurors (who were sure to support the "right" verdict) just as they may now count their phantom election votes?

You're right.

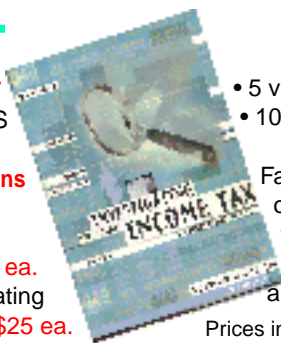
Another problem involves voter turnout statistics that are computed from the total number of votes divided by the

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total number of registered voters. If the list of registered voters is inflated with phantom voters, the calculated voter turnout might appear to grow smaller and smaller.

Caller: There's an article called "Statistical Evidence In Law" in Volume 7 No. 1 of the AntiShyster that says the US Supreme Court opened the door to statistical proof in 1971 in *Griggs v. Duke Power Co.*, 401 US 424, 432. What's interesting is that any probability of reoccurrence greater than 5% can be used as evidence in law.

Good point. In a sense, a statistical analysis can create sufficient "probable cause" for a court to consider an issue – and what is more easily analyzed than the various recorded numbers of voters and registered voters? A good statistician examining the simple totals of just ten elections might easily draw some astonishing and legally significant conclusions.

Dear diary

Here's some closing notes and updates from John Shull on the progress of his case. Although he's still getting serious legal resistance, pay close attention to the impact he's already had.

15 August 1997: State District

Judge David Pebbles ruled: 1) that Bexar County, the election administration agency, and the DA had violated mandatory requirements of the Texas Election Code; and 2) all District Judges residing or presiding within Bexar County are disqualified from hearing my case.

This means that Bexar County and the DA are — for the first time — being held accountable for the application of the state election code. This is a major setback for the DA and a victory for me, after months of solitary battle against what many first called "insurmountable odds".

8 September 1997: Ballot counting begins in the *Alanis v Flores* case that's derived from my case. A second derivative case (*Vodojick*) involves local Sheriff calling on talk radio KTSA for all of those contesting elections to form a group to solve problems. County Judge Krier and key personnel in Bexar County election administration followed for fifteen minutes of radio time to side-track the Sheriff's proposal while claiming *others* are responsible and, besides, no one has told Judge Krier what's wrong. (Perhaps she can't read the court petition I filed that details the problems.) Attorney General candidate in 1998

elections announces that voter fraud in Bexar County will be an issue. Bexar County officials are increasingly running for cover from the Shull case.

10 September 1997: School bond issue suit is filed based in part on polling site irregularities and election process fraud in Western District Federal Court. Shull case issues now expanding in application and concern. Public rally held at Federal Court.

11 September 1997 - State Attorney General (elected by the same system I am contesting – talk about the fox in the hen house) is trying to figure out how to avoid conducting a criminal investigation (as requested by Governor George Bush Jr.) into voter irregularities in Bexar County. It's been almost a month and no apparent action known. Calls to AG's office result in "We're working on it" and "It's been assigned". The Governor's office claims "No knowledge". The Texas Secretary of State is assembling a task force to address future Bexar County election problems – I believe they want to "take over" county election administration but no statutory authority exists to do so.

Meanwhile, the local Bexar County government has yet to investigate anything while it spends more time and tax money concealing things that shouldn't have been done and other things that should've been done, but weren't. Is an "investigation" unnecessary because those charged with investigating my allegations are participants in the alleged offenses and therefore already "know" all the evidence?

12 September 1997: Election suit enters 17th month. The following letter was sent to a San Antonio tabloid magazine – the *Current* – based on their September 4th article "Shull Game". In that article, they stated my case was over, that I was costing the taxpayers a lot of money, and I should just go away. The article contained more than twenty major factual discrepancies but they refused to print what follows. The gist of their article can be inferred from my response. This gives an idea of what I've been up against as they attempt to create a "taxpayer revolt" against the continuing court costs of my case without ever dealing with its merits:

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"I take exception to your latest article on my election case suit for the following reasons:

"1. Me: If I did not have something to say as a non-attorney, individually pursuing this case for 30+ hearings and 17 months, why have the legal wizards of our DA's office been unable to stop me? Why has Governor Bush requested a criminal investigation? Why have four other, derivative lawsuits been filed? Maybe you all have the wrong picture.

"2. Mediation: For whatever reason, your article made no mention of my attempt to settle and the DA's bad faith efforts. I offered to come in as a county employee to correct the election process defects I'd discovered and train those other county employees involved in the election process. Initially, the DA said yes and then 72 days later refused to do what they told the Court they were going to do – provide me with a job with responsibility to clean up the system.

"3. Taxpayer costs: The DA has alleged spending a 1/4 million dollars fighting an estimated 15 hours of legal testimony so our election officials need not later resort to "memory loss" in court. That's almost 1/2 million dollars spent so far on my case with no end in sight. But I originally asked for about 1/10th of that in the form of a job to correct the election process problems I'd discovered plus my court costs. Bexar County originally agreed to this settlement but then reneged, 72 days later. So who is really wasting tax money and misleading the taxpayers?

"4. Concealment conspiracy: if the DA, all election officials, and the court were repeatedly preventing you

from getting public information, what conclusion would you draw? Especially when you consider that the election process is supposed to be open, accessible, and explainable to all. Is it possible that such acts are a direct attempt to avoid liability for their collective and individual acts? A reasonable person would think so.

"In summary, we all win or lose in this case because it is about our ability to influence our destiny — whether it be schools, representatives, or the like. Such activities must be open to the public and our officials must pay if they do not do what they are supposed to . . . The days of political scandals, when taxpayers pay the bill but never jail the person(s) responsible, should be gone.

"Thanks for this opportunity,
"John Shull"

This case is far from over, but it's astonishing how much Mr. Shull has already achieved. Constitutionalists can fight city hall.

Mr. Shull has caused or inspired: an FBI investigation; dissolution of a county agency; a criminal investigation by the Texas Attorney General; all Bexar County judges to be recused from hearing his case; \$500,000 in legal costs to defend against his allegations; three additional lawsuits against Bexar County; and a public rally at the County court house. Who says, "You can't fight city hall"? Constitutionalists CAN.

Mr. Shull's impact is proof that just one individual, any individual — maybe you — can make an enormous difference in this nation if you're willing

to do your homework and "get involved". Just pick up a copy of your state's election code and start reading; with a little study, you'll probably be one of only a handful of people in your state who really know election law. Then get involved as a candidate or precinct election judge, keep your eyes open, start gathering information, and then do whatever's right. Y'know, it's quite possible that a hundred men like John Shull could change this whole country by simply insisting the government obey the law in general and the Constitution in particular.

You can reach John Shull at 1115 Old Lake Rd, San Antonio, Tx 78245; Tel: 210-670-1418; fax: 210-670-8060; "People For John Shull" accepts donations to defray expenses at POB 764444, San Antonio, Tx 78245. Email: jshull1@juno.com. or voterfraud@juno.com.

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