

COPY

Cause No. 68295-422

RICK WILSON,

Contestant,

v.

DARRELL GROOMS,

Contestee.

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IN THE DISTRICT COURT

OF KAUFMAN COUNTY, TEXAS

422nd JUDICIAL DISTRICT

JUDGMENT

ON THE 28th day of November, 2005, came on to be heard the contest of the City of Forney, Texas, mayoral election held May 7, 2005, with early voting preceding said date. **CONTESTANT**, Rick Wilson, appeared in person and with his attorneys, John M. Clement and Robert C. Jenevein, and announced ready for trial. **CONTESTEE**, Darrell Grooms, appeared in person and with his attorneys, Kent Hofmeister and Mark E. Goldstucker, and announced ready for trial.

Thereafter trial proceeded before the Court.

Both parties made opening statements and then produced evidence to the court through live and deposition testimony, and introduction of documentary and other demonstrative evidence. After **CONTESTANT** and **CONTESTEE** rested and closed, each party made closing statements.

The Court then considered the evidence and made the following findings of fact and conclusions of law by clear and convincing evidence, and issued the following orders accordingly:

The number of qualified voters who testified that they voted in early voting for **CONTESTANT** exceeded by a substantial number the number of ballots found in the ballot box that voted for **CONTESTANT** and that were counted for him and were allegedly the only ballots cast in early voting, an irreconcilable discrepancy.

The wire seal was not properly affixed and secured to the early voting ballot box.

The same counter stamp was testified to have been used to stamp all ballots. However, the two ballots used prior to early voting to be sent to mail-in voters and the ballots above

number 1100 required to be prepared on election day had six (6) digits while all other ballots had only five (5) digits.

There are different fonts and different word arrangements on ballots numbered one (1) through 1100 from the ballots numbered above 1100 although the City Secretary/Early Voting Clerk testified that all ballots were made from one master form which she identified in court.

The City Secretary/Early Voting Clerk testified that on the back of each of the early voted ballots she affixed her stamp "OK City Secretary" and it did not have a box outlining the "OK City Secretary". She could not explain how the box appears on the back of some early voted ballots. The stamp she testified she used and produced in court was incapable of making the box.

The ballots and ballot box used in early voting were not properly secured at the Forney, Texas, City Hall at the time of early voting.

The ballot box used in early voting was capable of being breached without opening the locks or cutting the wire seal.

The ballot of Andy Parker, a person who voted early, was voted for **CONTESTEE** not for **CONTESTANT** as he testified he had voted.

Rick Biddenstadt, a person who voted early, testified that he had made a specific identifying mark on his ballot. No such mark was found on any of the early voted ballots.

There is no evidence that **CONTESTEE**, Darrell Grooms, tampered with any ballots or ballot boxes, nor is there any evidence that he was in any way involved in any action to change the outcome of the election.

THE COURT FINDS by clear and convincing evidence that the outcome of the contested election, as shown by the final canvass, is not the true outcome because an election officer or other person officially involved in the administration of the election failed to count legal votes and/or engaged in illegal conduct and/or made a mistake.

THE COURT cannot ascertain the true outcome of the contested election and the **COURT DECLARES THE ELECTION VOID AND A NEW ELECTION IS ORDERED.**

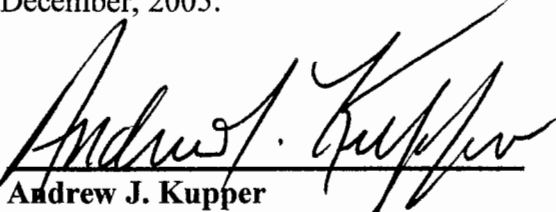
THE COURT ORDERS that the new election be scheduled for and held on Saturday, January 21, 2006, with early voting to begin Monday, January 9, 2006.

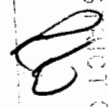
The deadline for withdrawal from the herein specially set mayoral election is Tuesday, January 3, 2006, at 5:00 p.m.

Costs are assessed equally against **CONTESTANT** and **CONTESTEE** as no good cause has been shown to the contrary.

The request for attorney fees by **CONTESTANT** is **DENIED** as not proper and/or not properly presented.

SIGNED the 12th day of December, 2005.


Andrew J. Kupper
Judge Presiding, By Assignment

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KAUFMAN COUNTY
05 DEC 12 PM 1:38
SANDRA FEATHERSTON
DISTRICT CLERK

CLERK DEPUTY

THE STATE OF TEXAS
COUNTY OF KAUFMAN

I, Sandra Featherston, District Clerk of Kaufman County, Texas do hereby certify this is a true and correct copy filed in the records of the Kaufman County District Clerk's Office. Given under my hand and seal of said office on this 12 day of Dec, 2005.

SANDRA FEATHERSTON, DISTRICT CLERK
Kaufman County, Texas

By 