

# SUPREME COURT OF LOUISIANA

*No. 98-C-2929*

ROOSEVELT SAVAGE

Versus

WILLIAM F. “BILLY” EDWARDS

LEMMON, J., Concurring

While I agree with the result, I disagree with the reasoning of the court of appeal in the present case, as well as with the reasoning of the majority of this court in Moreau v. Tonry, 339 So. 2d 3 (La. 1976).

In Moreau, the apparent winner had a 184-vote victory margin, but the evidence established, among other irregularities, that there were 616 votes on the machines for which there were no voters' signatures on the precinct registers, prompting Judge Redmann at the intermediate appellate level to observe: “[f]ew candidates indeed could muster the forces that mastered the foulness of [the Moreau - Tonry] election.” 338 So. 2d 791, 795 (La. App. 4th Cir. 1976). The intermediate court (on which I was then serving) annulled the election, warning that “[i]n future election contests, candidates (and their commissioners) should know that a vote on the machine without a voter's signature in the precinct register (or other lawful support) will not be allowed to decide an election.” Id.

Neither should vote buying, forged voting papers or other such foul practices be allowed to decide any election. When the evidence establishes fraudulent practices (especially where the candidate is involved) which are so pervasive that one can reasonably conclude the apparent winner did not have sufficient valid votes to prevail

in the election, a new election should be required.

It is difficult to articulate a standard for annulling an election in which widespread election fraud has been proved, but specific fraudulent votes in a number sufficient to cover the winner's margin of victory have not been proved. However, deciding difficult legal issues goes to the very heart of the judicial process.<sup>1</sup> We granted certiorari in the present case to address the issue of the standard to establish and to begin drawing lines on a case-by-case basis.<sup>2</sup> However, since the record does not support a conclusion that the fraud and irregularities are so pervasive as to require nullification of the election, the articulation of an appropriate standard must await another day. I therefore concur in affirming the judgment of the court of appeal.

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<sup>1</sup>I especially disagree with the argument that annulling fraudulent elections, except those in which sufficient fraudulent votes to cover the victory margin can be proved, will "open the floodgates" to contesting numerous elections. A warning by this court that fraud in elections will not be tolerated should reduce fraud and therefore reduce election contests based on fraud. On the other hand, tolerating pervasive election fraud can only encourage more fraud in future elections, although it may discourage election contests.

<sup>2</sup>A general flexible standard would necessarily be applied on a case-by-case basis. For example, direct evidence of a specific number of instances of vote buying, combined with additional direct evidence of extensive other irregularities, may circumstantially raise sufficient inferences of additional vote buying that cannot be proved directly in the brief period for garnering evidence. Obviously, other factors must be considered, such as the victory margin and the total number of votes cast, and the standard would be used sparingly.