

The One Case: What a Federal Court Actually Decided About Electronic Union Voting

Pete Martin, Votem. A research note, not legal advice.

THE CASE

Acosta v. Association of Professional Flight Attendants, No. 4:16-cv-1057-A (N.D. Tex. Sept. 26, 2017) (McBryde, J.), Memorandum Opinion and Order, Doc. 41. The Department of Labor filed the suit on November 18, 2016, when Thomas Perez was Secretary, so it was first captioned *Perez v. APFA*. By the time of the ruling R. Alexander Acosta was Secretary.

APFA represents American Airlines flight attendants. It elected its four national officers electronically, and voting closed January 9, 2016. The vendor was BallotPoint, as named in APFA's own court filings. After a member complained, the Department sued under Title IV of the LMRDA and made two claims. The first was that the system let voters be linked to their votes, which violates the secret-ballot rule (29 U.S.C. § 481(a)). The second was that observers could not verify that votes were recorded and tallied accurately, which violates the observer right (§ 481(c)).

The court granted summary judgment to the Department. It declared the election void and ordered a new election under DOL supervision. That rerun was a mail-ballot election with an April 13, 2018 tally and a May 23, 2018 runoff.

We have found no other federal court decision that rules on the merits of an electronic voting method in a union officer election. That includes OLMS's published enforcement summaries from 2014 through 2026. The Department brought an earlier suit with the same claims against the Allied Pilots Association's Dallas–Fort Worth domicile (N.D. Tex., filed December 2014), but it ended in a consent decree and a supervised mail-ballot rerun, not in a ruling.

WHAT IT TURNED ON

Secrecy is about possibility, not proof. The system stored data on two servers. Someone with access to both could have matched voters to votes, and the evidence showed two ways to do it. APFA did not dispute that this was possible. Its argument was that members couldn't have known about it, so the outcome couldn't have been affected. The court rejected that argument. It held that "it does not matter whether anyone actually took advantage" of the ability to identify votes, and that "it is enough that the possibility existed." Once a violation is shown, the law presumes it may have affected the outcome, and the union must prove otherwise.

"Reasonable steps" is not the standard. The court held that the statute requires a secret ballot, not "all reasonable steps" to guard secrecy.

Observers must be able to observe. APFA conceded that observers could not verify the count and offered expert-backed technical safeguards in their place. The court held that this did not excuse compliance with § 481(c). It noted that APFA had not made its system available to testing boards or observers.

The technology did not "fail." Nothing in the opinion finds a miscount, tampering, a breach, or that anyone actually saw how a member voted. The election was voided because of how the system was designed and run: votes could be linked, and the count could not be observed.

WHAT THIS MEANS IF YOU VOTE ONLINE OR BY HYBRID

These checks follow the holding and OLMS's current Compliance Tip, *Electing Union Officers Using Remote Electronic Voting Systems* (updated Dec. 10, 2024):

- **Map where identity and vote data live.** Then confirm in writing that no one, including the vendor, can join them. OLMS describes a design that avoids a persistent link: determine eligibility before credentials go out, assign credentials randomly, keep identifying information out of the credentials, and leave no trail from a credential to its ballot.
- **Split the keys.** OLMS lists encrypted ballot files that need several decryption keys held by diverse parties.
- **Write observation into the rules for every phase.** That covers list review and eligibility challenges, credential preparation and distribution, test runs, counting, and audit. Where traditional observation is impossible, OLMS says it will not find an observer violation if members had open-source code inspection, a system auditor, or "some other meaningful opportunity to observe."
- **Keep logs and audit.** OLMS lists detailed transaction logs with integrity controls, periodic independent audits, and a written security policy.
- **Offer another way to vote.** OLMS says a union-provided internet access point or another voting method must be offered, on request, to any member without internet access.
- **Keep records for one year.** This includes eligibility lists, credentials, log files, time-stamped software code, encrypted ballot files, and tally results.
- **Expect no safe harbor.** OLMS says the Tip "does not offer unions safe harbor" and that each system is evaluated case by case.

WHAT IT DOES NOT MEAN

- **It did not hold that electronic voting is unlawful.** It held that this system, as used in this election, failed two specific requirements.
- **It is one district court's ruling.** It binds only the parties and is not an appellate precedent.
- **It left questions open.** The court expressly took "no position" on whether a system like the State of Texas's certified voting-machine safeguards would satisfy the observer requirement.
- **The Department's guidance has moved since.** The 2024 Tip says a persistent electronic link between voter and vote is not, "in and of itself," a violation, and it accepts alternatives to traditional observation. The opinion's reasoning is still the only judicial word on the subject.

- **Title IV covers officer elections in unions the LMRDA covers.** OLMS says the election requirements generally do not apply to unions made up entirely of state and local government employees. The case did not address ratification or other membership votes.

This note is research, not legal advice. Your counsel gets the last word.

SOURCES

- Memorandum Opinion and Order, *Acosta v. APFA*, No. 4:16-cv-1057-A (N.D. Tex. Sept. 26, 2017): <https://law.justia.com/cases/federal/district-courts/texas/txndce/4:2016cv01057/281745/41/>
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- OLMS Compliance Tip, *Electing Union Officers Using Remote Electronic Voting Systems* (Dec. 2024): <https://www.dol.gov/agencies/olms/compliance-assistance/tips/remote-electronic-voting-systems>
- OLMS, *Electing Union Officers* (coverage): <https://www.dol.gov/agencies/olms/compliance-assistance/elections>
- J. Steingart, "American Airlines Union's Officer Election Won't Fly, Judge Says," Bloomberg Law (Sept. 27, 2017): <https://news.bloomberglaw.com/daily-labor-report/american-airlines-unions-officer-election-wont-fly-judge-says>