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**US SUPREME COURT DENIES APPEAL OF THE BORDER
FENCE LAWSUIT FILED BY EL PASO COUNTY**

County Attorney José R. Rodríguez announced today that he was notified this morning that El Paso County's appeal to the United States Supreme Court in its border fence case against the U.S. Department of Homeland Security was denied.

El Paso County Attorney expressed his disappointment with the decision. "We are disappointed but not surprised by this outcome. While we feel that we had a strong case, competition for space on the Supreme Court's crowded docket is high," Rodríguez said.

"This decision now ends our pursuit of this case. El Paso County would very much like to thank Mayer Brown LLP of Washington, D.C., for their defense and support in this case. Mayer Brown litigated this case without any cost to the county," said Rodríguez.

Although the appeal was rejected, Rodriguez expressed optimism that the Obama Administration has demonstrated a willingness to consult with local communities on the fence and other border security policies.

The lawsuit against the Department of Homeland Security was filed on June 23, 2008 by El Paso County, the City of El Paso, the El Paso County Water Improvement District No. 1, and the Ysleta del Sur Pueblo, among others. The lawsuit challenged Secretary Chertoff's statutory authority to issue a waiver of more than 30 federal, state, and local laws to accelerate the construction of a border fence in El Paso County. The County contended that the Congressional waiver of authority, without the opportunity for judicial review, was an unconstitutional delegation of legislative power and moreover, that it was insufficient to permit the Secretary to declare pre-empted every state and local law related to the waived federal statutes.

On September 11th, 2008 a Federal District Judge of the Western District of Texas granted the Department of Homeland Security's motion to dismiss the lawsuit based on the merits of the case.

In his ruling, U.S. District Judge Frank Montalvo held that the waivers used by the Secretary of Homeland Security Michael Chertoff to expedite the construction of the border fence were constitutional because "...Congress constitutionally delegated its authority in the Waiver Legislation."

Judge Montalvo further ruled that the Waiver legislation did not violate the 10th amendment to the U.S. Constitution because the waivers were issued with the intent to "preempt state and local laws, which would interfere with Congress's objective to expeditiously construct the border fence."

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