

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

SPC STEVEN J. REITZ, and	:	
SPC MATTHEW J. SCHRAMM,	:	Civil Action No. 1:04-CV-2360
	:	
Plaintiffs	:	(Judge Kane)
	:	
v.	:	
	:	
RENDELL, <u>et al.</u>,	:	
	:	
Defendants	:	

ORDER

The subject of the November 2, 2004 Presidential Election has been before this Court since April of this year when the United States Attorney General sought and obtained injunctive relief under the Uniformed and Overseas Citizens Absentee Voting Act of 1986, 42 U.S.C. §§ 1973ff-1 et seq. (“UOCAVA”), to protect the right of overseas and military voters to participate in primary elections. In connection with United States of America v. Commonwealth of Pennsylvania, et al., (Civil Action No. 1:04-CV-830), the Commonwealth of Pennsylvania has reported to the United States Attorney General regarding the Commonwealth’s compliance with election laws as they affect overseas and military voters, including providing information concerning the mailing of absentee ballots.

On October 8, 2004, the United States Attorney General sought an order requiring the Commonwealth to issue to all UOCAVA voters new absentee ballots excluding the names Ralph Nader and Peter Miguel Comejo as candidates for President and Vice President of the United States. To allow for the return of such amended ballots, the Government sought a two week extension. This Court denied that relief on October 20, 2004, finding that the reissuance of ballots that excluded the names of Nader and Comejo would not serve the interests of overseas

voters or the public at large.¹ The Government did not seek any extension of election deadlines independent of its request for amended ballots. In fact, the Government produced evidence that military and overseas voters were receiving one-on-one assistance in voting and that their ballots would be returned by express mail in time for the general election.

On Wednesday, October 27, 2004, this private action was brought under UOCAVA. Plaintiffs Steven J. Reitz and Matthew J. Schramm, members of the United States military serving in Iraq and Kuwait, respectively, complain that their home counties did not mail absentee ballots in time for their votes to be counted in the November 2, 2004 election, and that absent emergency injunctive relief, they and other similarly situated military voters will be disenfranchised.² Representatives of Plaintiffs proffer that serious lapses in assistance to military voters and serious delays in the return of military mail to the United States threaten their rights under UOCAVA. This proffered testimony would support an order of this Court extending the deadline for overseas and military voters. In light of this proffered testimony, representatives of the Commonwealth, together with Plaintiffs' counsel, have negotiated a consensual resolution extending the deadline for receipt of absentee ballots from UOCAVA voters until 5:00 p.m. on

¹ This Court's October 20, 2004 opinion is published at www.pamd.uscourts.gov.

² The Court notes that the relief requested by Plaintiffs in the instant case differs significantly from that requested by the United States Attorney General. In that case, the United States sought to have the Commonwealth issue amended absentee ballots to UOCAVA voters two weeks prior to the election. Moreover, the United States requested that UOCAVA voters be permitted to return these newly issued amended ballots by electronic mail, facsimile, or other means not provided for under Pennsylvania law, and that the Court direct the Commonwealth to extend the deadline for receiving UOCAVA voters' ballots for at least two weeks. In the instant case, Plaintiffs do not seek to have amended ballots printed and issued, nor do they seek alternative means of returning ballots. Instead, Plaintiffs request only that UOCAVA voters be given an additional period of time to return their absentee ballots to remedy delays regarding the issuance of such ballots.

November 10, 2004. Based on Plaintiffs' proffer, this Court has approved a stipulation memorializing the parties' agreement.

Accordingly, **IT IS HEREBY ORDERED THAT:**

1. To assure the rights of "absent uniformed services and overseas voters" who are protected by the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA" or "Act"), 42 U.S.C. § 1973ff—1973ff-6, the Secretary of the Commonwealth shall take all reasonable steps necessary to direct the county boards of elections – notwithstanding the deadline prescribed by Pa. Stat. Ann. tit. 25, § 3145.6(a) (West Supp. 2003) – to accept as timely received, solely for purposes of the Federal offices that are included on such ballots for the November 2, 2004, General Election, absentee ballots, including any federal write in ballots, cast by "absent uniformed services and overseas voters" as defined by the Act (including absent uniformed services voters who are "overseas voters" as defined by the Act), so long as those ballots are received by the appropriate county board of elections not later than 5 P.M. on Wednesday, November 10, 2004.

2. For those absentee ballots received from the absent uniformed services and overseas voters described in ¶ 1, the Secretary of the Commonwealth shall take all reasonable steps necessary to direct the county boards of elections to canvass the absentee ballots in accordance with Pennsylvania law and to count the valid votes cast for Federal offices only on those determined by the board of elections to be valid absentee ballots under Pennsylvania law.

3. No absentee ballot cast by an absent uniformed services voter or overseas voter described by ¶ 1 shall be valid unless it was cast by the voter not later than 8:00 P.M. Eastern Standard Time on Tuesday, November 2, 2004. For purposes of determining that an absentee

ballot was cast on or before November 2, 2004, the Secretary of the Commonwealth shall direct the county boards of elections that proof of mailing or delivery of the completed absentee ballot on or before November 2, 2004, will be required to demonstrate that the ballot was timely cast.

4. This Court makes no findings of liability against the Governor or the Secretary of the Commonwealth that they failed to fulfill any responsibilities placed upon them by federal law.

5. The Governor and the Secretary of the Commonwealth, pursuant to delegation by the Pennsylvania Attorney General, agrees to file an action in the Commonwealth Court in their own names seeking the same extension of time as referenced in ¶ 1 for all for all absent uniformed services and overseas voters as defined by the Act to have timely received ballots and validly cast votes for state office on those ballots determined by the board of elections to be valid absentee ballots under Pennsylvania law.

6. This Court shall retain jurisdiction over this matter.

S/ Yvette Kane
Yvette Kane
United States District Judge

Dated: October 29, 2004