

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

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) Civil Action No.  
 )  
 THE COMMONWEALTH OF PENNSYLVANIA; )  
 EDWARD G. RENDELL, Governor of the )  
 Commonwealth of Pennsylvania; and )  
 PEDRO A. CORTES, Secretary of the )  
 Commonwealth of Pennsylvania, )  
 )  
 Defendants. )  
 )

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COMPLAINT

1. This action is brought by the Attorney General of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act of 1986, 42 U.S.C. §§ 1973ff to 1973ff-6 ("UOCAVA"), which provides that absentee uniformed services voters and overseas voters shall be permitted "to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 42 U.S.C. § 1973ff-1. The Attorney General is granted enforcement powers under UOCAVA, 42 U.S.C. § 1973ff-4, and files this complaint to ensure that United States citizens living abroad, who are qualified to vote in the federal primary election of April 27, 2004, in the Commonwealth of Pennsylvania, and who have filed timely applications for absentee ballots, will have an opportunity to vote in that election and have their ballots

counted.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

3. Defendant Commonwealth of Pennsylvania is charged with the responsibility of assuring that Pennsylvania election laws, as applied, comply with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff to 1973ff-6.

4. Defendant Edward G. Rendell is Governor of the Commonwealth of Pennsylvania and is sued in his official capacity. The Governor is the chief executive officer of Pennsylvania, and is charged with the duty of taking care that the laws be faithfully executed. Pa. Const. art. IV, § 2. The Governor's principal office is in Harrisburg, Pennsylvania.

5. Defendant Pedro A. Cortes is Secretary of the Commonwealth of Pennsylvania and is sued in his official capacity. The Secretary of the Commonwealth is the chief election officer of Pennsylvania, and as such is responsible for the administration of state laws affecting voting, and for assuring that elections in the Commonwealth are conducted in accordance with law. The Secretary's principal office is in Harrisburg, Pennsylvania.

6. In the federal primary election of April 27, 2004, the voters of the Commonwealth of Pennsylvania will participate in the selection of nominees for president and vice president of the

United States, for the United States Senate, and for the United States House of Representatives.

7. County election officials in the Commonwealth of Pennsylvania have received timely requests for absentee ballots from overseas voters who are entitled to vote pursuant to the provisions of UOCAVA.

8. Under Pennsylvania law, absentee ballots sent from overseas civilian and military voters must be received by the Friday before the date of the primary election to be counted for all federal and state offices, and must otherwise satisfy the requirements of Pennsylvania law. 25 Pa. Stat. Ann. § 3146.6(a). For the federal primary election of Tuesday, April 27, 2004, the deadline for receipt of absentee ballots is Friday, April 23, 2004.

9. In order to provide overseas citizens a fair opportunity to vote by absentee ballot, election officials in Pennsylvania must mail the ballots to the voters sufficiently in advance of election day to allow the voter to receive the ballot, cast a vote, and return the ballot to the office of the election official by the deadline established under Pennsylvania law.

10. The United States Postal Service estimates that a period of 10 to 17 days is a reasonable benchmark from the time of posting to the time of delivery of international mail, and that a period of 20 to 34 days is a reasonable benchmark for a round trip if the addressee responds on the day the letter is

received. The United States Department of State has estimated that 10 to 14 days is a reasonable one-way international benchmark. The United States Military Postal Service Agency estimates that at least 30 days are necessary for mail sent to overseas military personnel to make a complete round trip. This estimate takes into account the fact that some military personnel are stationed in remote areas. The Federal Voting Assistance Program of the Department of Defense recommends that states allow 40 to 45 days for round trip mailing time for overseas ballots.

11. A Pennsylvania statute, 25 Pa. Stat. Ann. § 3146.5(a), provides that absentee ballots must be mailed 50 days before a primary election to voters who have requested absentee ballots and state with their ballot applications that they will be in "extremely remote or isolated" overseas locations, and 45 days before a primary election to all other qualified voters who have requested absentee ballots. If official absentee ballots are not yet printed by the prescribed deadline, special write-in absentee ballots are to be sent in their place. This statute was enacted to ensure adequate time for overseas ballots to be received and returned in time to be counted. It was enacted after the Commonwealth of Pennsylvania and the United States Department of Justice reached an informal agreement under UOCAVA for the federal primary election of May 15, 1990, to extend the deadline for receipt of absentee ballots from May 11 to May 25, 1990.

12. In many Pennsylvania counties, election officials

failed to mail official absentee ballots or special write-in absentee ballots to qualified overseas citizens who had filed timely requests for such ballots sufficiently in advance of the April 27, 2004, federal primary election to allow voters to receive the ballot, cast a vote for all federal offices, and return the ballot to election officials by the deadline of April 23, 2004, established under Pennsylvania law. In so doing, these officials also failed to comply with the absentee ballot mailing requirements of 25 Pa. Stat. Ann. § 3146.5, which embodied Pennsylvania's policy judgment concerning the time necessary for the transmission of absentee ballots and their return in time to be counted.

13. The failure of county election authorities in Pennsylvania to mail absentee ballots to military and civilian overseas voters sufficiently in advance of April 23, 2004, to allow the voting and return of ballots by the deadline will deprive United States citizens of an opportunity to vote in a federal primary election contrary to the provisions of UOCAVA.

14. An order of this Court is necessary requiring the Commonwealth to take corrective action in order to protect the rights granted by the Uniformed and Overseas Citizens Absentee Voting Act.

WHEREFORE, plaintiff prays that this Court hear this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345; issue a declaratory judgment under 28 U.S.C. § 2201 that the late mailing

of absentee ballots in the Commonwealth of Pennsylvania in advance of the federal primary election of April 27, 2004, violates UOCAVA; and issue preliminary and permanent injunctive relief ordering the defendants, their agents and successors in office, and all persons acting in concert with them:

- (1) to take such steps as are necessary to require that appropriate election officials count as validly cast ballots, in contests relating to the selection of nominees for federal office, those ballots cast by persons outside the United States who are qualified to vote in the Commonwealth of Pennsylvania pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff to 1973ff-6, and who timely applied for absentee ballots from appropriate election officials for the April 27, 2004, federal primary election, as long as such ballots are received by appropriate election officials before the close of business on May 7, 2004, and otherwise satisfy the requirements of Pennsylvania law;
- (2) to order that election officials throughout the Commonwealth accept at the April 27, 2004, federal primary election, on the same terms and for the same offices as other valid absentee ballots, the federal write-in absentee ballot (FWAB) provided

for in UOCAVA, 42 U.S.C. § 1973ff-2;

- (3) to order that election officials throughout the Commonwealth make available for the April 27, 2004, federal primary election additional methods for sending and receiving absentee ballots to and from overseas voters such as air express services and facsimile and electronic mail transmission, in addition to traditional mail service;
- (4) to take such steps as are necessary to afford military and civilian overseas voters eligible to participate in the April 27, 2004, federal primary election a reasonable opportunity to learn of this Court's order, including notice to affected voters and public service announcements in relevant overseas media;
- (5) to provide a report to the United States, within 45 days after the April 27, 2004, federal primary election, setting forth the number of military and other overseas ballots, including FWABs, received and counted for the said federal primary election; and
- (6) to take such steps as are necessary to afford military and civilian overseas absentee voters eligible to vote in Pennsylvania under the Uniformed and Overseas Citizens Absentee Voting

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Act a fair and reasonable opportunity to  
participate in future primary and general  
elections for federal office.

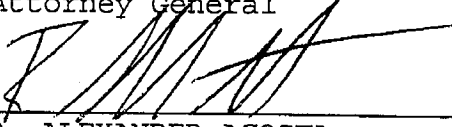
The United States further prays that this Court grant such  
other and further relief as the interests of justice may require.



Respectfully submitted,


JOHN D. ASHCROFT  
Attorney General

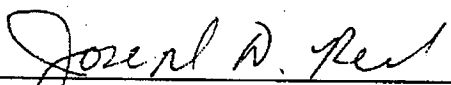
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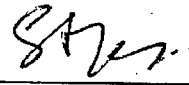
  
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