

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE COMMONWEALTH OF
PENNSYLVANIA; EDWARD G.
RENDELL, Governor of the Commonwealth;
of Pennsylvania; and PEDRO A. CORTES,
Secretary of the Commonwealth of Pennsylvania,

Defendants.

Civil Action No.
1:04-CV-0830

Hon. Yvette Kane

Filed Electronically

STIPULATION AND ORDER OF DISMISSAL

This is a civil action under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff *et seq.* ("UOCAVA"), to protect the right of United States citizens, both military and civilians living overseas (collectively, "UOCAVA voters"), to vote by absentee ballot in elections for federal office. On April 15, 2004, the United States filed this action, seeking preliminary and permanent injunctive relief. The complaint alleged several instances between 1988 and 2004 in which absentee ballots were mailed without sufficient time for UOCAVA voters to receive, cast and return them by the deadline under Pennsylvania law, and sought emergency relief for the delayed mailing of ballots to UOCAVA voters for the April 27, 2004 federal primary election.

To preserve Pennsylvania overseas voters' right to vote in the federal primary election of April 27, 2004, the Court issued a temporary restraining order and preliminary injunction with regard to that election. *See* Order of April 16, 2004. The Court denied preliminary relief sought prior to the November 2004 general election. *See* Memorandum and Order of October 20, 2004. Since February 2005, the proceedings have been stayed by agreement of the parties to permit the Pennsylvania General Assembly to enact legislation to ensure long-term compliance with

UOCAVA by the Commonwealth and its counties. The parties have agreed to interim measures for reporting and oversight of compliance with UOCAVA by the Commonwealth and its subdivisions. *See* Joint Motion to Stay the Action of February 15, 2005; Interim Agreement and Joint Motion to Extend Stay of February 7, 2006.

On May 3, 2006, the General Assembly of Pennsylvania passed Senate Bill 999, which was signed into law by Governor Rendell on May 12, 2006 and became effective July 1, 2006. This law, now referred to as Act 45, amends several provisions of Pennsylvania's Election Code, including the deadline for UOCAVA voters to return their absentee ballots. Specifically, Section 12 of Act 45 amends Section 1308 of the Pennsylvania Election Code to provide that absentee ballots cast by qualified absentee electors defined under Section 1301 (a)-(h) of the Pennsylvania Election Code, which includes UOCAVA voters, will be canvassed if they are received in the office of the county board of elections no later than 5:00 p.m. on the seventh day following an election, and postmarked no later than the day immediately preceding the election.

In light of the passage of the relevant provisions of Act 45, the parties desire to settle this action without the need for costly and protracted litigation. As part of this agreement, the parties have negotiated a Memorandum of Understanding ("MOU") pursuant to which the Commonwealth will monitor each county's compliance with UOCAVA during the next two federal election cycles and provide reports to the United States regarding those efforts. These obligations are set forth more fully in the MOU annexed to this Stipulation and are incorporated herein.

Accordingly, it is hereby ORDERED, STIPULATED, AND AGREED that:

1. All claims by the United States in this action up to and including the date of this agreement shall be dismissed under Fed. R. Civ. P. 41(a)(2);
2. This Order of Dismissal expressly incorporates the terms of the annexed MOU;

and

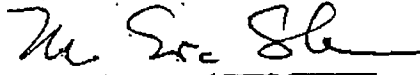
3. This Court expressly retains jurisdiction for the purpose of enforcing the terms of the annexed MOU for the term of the MOU, or for any extended duration pursuant to a written agreement by the parties.

Dated this 27th day of July, 2006.

For the Plaintiff
United States of America:

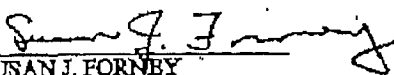
WAN J. KIM
Assistant Attorney General
Civil Rights Division

THOMAS A. MARINO
United States Attorney for the Middle
District of Pennsylvania



JOHN K. TANNER
REBECCA J. WERTZ
M. ERIC EVERSOLE
IN 21190-49
EMILY B. SMITH
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
(NWB) Room No. 7254
950 Pennsylvania Avenue, N.W.
Washington, DC 20530
(202) 307-2767
(202) 307-3961 (facsimile)
eric.eversole@usdoj.gov

For Defendants Commonwealth of
Pennsylvania, Governor of Pennsylvania
and Secretary of the Commonwealth of
Pennsylvania:



SUSAN J. FORNBEY
PA 27744
Chief Deputy Attorney General
Strawberry Square, 15th Floor
Harrisburg, PA 17120
(717) 787-9831
(717) 772-4526 (facsimile)
sfornbey@attorneygeneral.gov



ALBERT MASLAND
PA 36511
Chief Counsel
Pennsylvania Department of State
302 North Office Building
Harrisburg, PA 17120
(717) 787-6458
(717) 787-1734 (facsimile)
amasland@state.pa.us



GREGORY B. DUNLAP
PA 38765
Deputy General Counsel
333 Market Street, 17th Floor
Harrisburg, PA 17101
(717) 783-6563
(717) 787-1788 (facsimile)
gdunlap@state.pa.us

IT IS SO ORDERED:

Dated: 7/31/06

s/Yvette Kane

Hon. Yvette Kane
United States District Court for the
Middle District of Pennsylvania