



In support of their request, Plaintiffs aver that:

1. **Plaintiffs Will Likely Prevail On The Merits**

Plaintiffs will likely prevail on the claim that the Commonwealth is in violation of UOCAVA. Plaintiffs will establish that county election officials failed to comply with the UOCAVA's requirement to timely forward absentee ballots to military and other overseas voters, in that at least two county boards of elections, and perhaps many more, failed to send absentee military and other overseas ballots by the required deadlines, and further, that the Secretary of State of the Commonwealth of Pennsylvania failed to remedy these deficiencies in a meaningful fashion.

2. **Plaintiffs Will Be Irreparably Harmed By Defendants Failure To Timely Send Out Absentee Military And Overseas Ballots**

Plaintiff military members will suffer irreparable harm due to the Defendants failure to ensure that county boards of elections send out absentee military and other overseas ballots by the statutory deadlines designed to ensure their return by November 2, 2004. Given the remote battle zones in which Plaintiffs and other similarly situated absentee military and overseas voters are presently serving, the late mailing of absentee ballots poses a substantial risk that these individuals will be disenfranchised, because even after they actually receive the absentee ballots they must complete and return them by the deadline.

Defendants have admitted and Plaintiffs can demonstrate that county election boards failed to timely mail or deliver the military and overseas absentee ballots in at least three counties. Specifically, in Venango, Montgomery and Huntingdon counties, county election officials failed to send out absentee ballots in accordance with UOCAVA and Pennsylvania law. Due to the failure of the Defendants to comply with the requirements of the law, a real risk of

disenfranchisement of Plaintiffs and other military overseas absentee voters exists and must be remedied immediately.

3. **Defendants Will Not Suffer Irreparable Harm If The Preliminary Injunction Is Issued**

Defendants will not suffer irreparable harm if the deadline is extended to November 17, 2004, for the receipt of military and other overseas ballots. Extending the deadline for the receipt of absentee military and other overseas voters creates no additional burdens on the Defendants and requires of them no affirmative action. Even with the grant of an extension until November 17, 2004, the Defendant Secretary of State will still have 22 days to certify the election to the Electoral College on or about December 13, 2004.

4. **Granting The Injunction Is In The Public Interest**

The public interest strongly supports the grant of an injunction to ensure the right of this country's military and other overseas voters, especially those serving in theatre of war, to receive ballots in sufficient time to permit their completion and return in order to be counted in the general election.

**RELIEF REQUESTED:**

WHEREFORE, for the aforementioned reasons and those set forth in the accompanying Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiffs request the Court issue the following narrowly tailored order:

1. Extend to November 17, 1004, the deadline for the filing of absentee military and overseas ballots by voters who are qualified to vote in the Commonwealth of Pennsylvania and direct that the Secretary of State of the Commonwealth take all reasonable steps necessary to accept absentee ballots from military and other overseas voters, as defined by UOCAVA, if received by that date, notwithstanding any other deadline imposed by state law.

2. Order the Secretary of State of the Commonwealth to direct all county boards of election to accept any vote for federal office in the General Election that is received on a federal write-in absentee ballot by November 17, 2004.

3. Order the Commonwealth to provide overseas voters the opportunity to return ballots by overnight delivery, and pay for the expense of the overnight delivery.

4. Order the Defendants to give notice of and otherwise publicize the extended deadline to all qualified UOCAVA protected voters who requested absentee ballots in any Pennsylvania county.

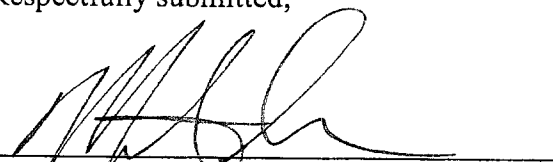
5. Order the Secretary of the Commonwealth to file a report with the United States Department of Justice and the Court setting forth the total number of issued and received absentee ballots in the General Election of November 2, 2004, in accordance with UOCAVA.

6. Order such other relief as the Court may deem appropriate.

In accordance with local Rule 7.1 of the U.S. District Court of the Middle District of Pennsylvania, Plaintiffs' counsel sought the concurrence of Defendants' counsel in this Motion and it was denied.

Respectfully submitted,

By:



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Attorney for Plaintiffs

Dated: October 27, 2004

**CERTIFICATE OF SERVICE**


I hereby certify that on October 27, 2004, a true and correct copy of the foregoing Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum of Law in Support of Motion for Temporary Restraining Order and Preliminary Injunction was served upon the persons listed below, via first-class mail, postage prepaid, as follows:

The Hon. Edward G. Rendell  
Governor  
Commonwealth of Pennsylvania  
Room 225, Main Capitol Building  
Harrisburg, PA 17101

The Hon. Pedro A. Cortes  
Secretary of the Commonwealth of Pennsylvania  
Room 302, North Office Building  
Harrisburg, PA 17120

The Hon. Leslie Anne Miller  
General Counsel  
Commonwealth of Pennsylvania  
17<sup>th</sup> Floor, 333 Market Street  
Harrisburg, PA 17101

By:

  
Matthew Dunham