



ballot from his respective county. Upon information and belief, to date, those absentee ballots have not been received because county boards of election failed to comply with statutory deadlines. Pursuant to UOCAVA, Plaintiffs seek to have their absentee ballots accepted and properly counted in the November 2, 2004 General Election.

UOCAVA protects the rights of eligible military and civilian voters to register and vote by absentee ballot in federal elections conducted by the state in which they are domiciled. 42 U.S.C. §§ 1973ff-1, 1973ff-6. To protect the rights of qualified voters<sup>1</sup>, a substantial number of whom are overseas in the military service of their country, states must ensure that absentee ballots are mailed in sufficient time to allow their receipt by these protected voters, and the completion of the return of the ballots to the appropriate election officials by the statutory deadline.

Pennsylvania law requires that absentee ballots must be received by 5:00 p.m. the Friday before the election to be counted in the General Election: in this election year Friday, October 29, 2004. See 25 Pa. Stat. Ann. § 3146.6(a). Absentee ballots in the Presidential race must be received by 8:00 p.m. on Election Day. See 1972 Op. Atty. Gen. No. 148 (interpreting Pennsylvania absentee voting provisions). Pennsylvania law requires that 45 days before the General Election, county election officials must commence to deliver or mail absentee ballots to qualified military and other overseas voters who have requested them. 25 Pa. Stat Ann. § 3146.5. Pennsylvania law further specifically requires that at least 70 days before the General Election county election officials must commence to deliver or send out absentee ballots or special write-in ballots to qualified military and other absentee overseas electors who declare that they are

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<sup>1</sup> Qualified voters are those whose applications for absentee ballots were received by appropriate election officials at least 30 days before the federal election in which they will be voting by absentee ballot.

unable to vote during the regular absentee balloting period by reason of living or performing military service in an extremely remote or isolated area of the world. Id. For those military and overseas absentee voters who apply for and are approved for absentee ballots after August 24, 2004, the county boards of election must deliver or mail the ballots within 48 hours of the application's approval. Defendants have admitted that they did not send out absentee ballots on time to all UOCAVA voters, and, thus, admit that they violated the statute in this essential regard. (See Exhibit "A," Press Release admitting that Venango County and Huntingdon County failed to send absentee ballots out to UOCAVA protected voters by the deadline; Exhibit "B," October 25, 2004 letter from the Governor to Senator Rick Santorum; and Exhibit "C," October 26, 2004 article from the Delaware County Times).

## **II. ARGUMENT**

Before a court will grant a preliminary injunction the moving party must establish four essential factors:

1. the likelihood of success on the merits;
2. that it will be irreparably harmed in the absence of injunctive relief;
3. that the non-moving party will not suffer even greater harm if the Court grants the requested injunctive relief; and
4. that the public interest favors preliminary injunctive relief.

Kos Pharms., Inc., v. Andrx Corp., 369 F.3d 700, 708, 2004 U.S. App. LEXIS 10165, 70 U.S.P. A.2d (BNA) (3d Cir. 1999), citing to Allegheny Energy, Inc. v. DOE, Inc., 171 F.3d 153, 158 (3d Cir. 1999).

**A. Plaintiffs Can Establish All Four Factors For The Grant Of Injunctive Relief**

**1. Plaintiffs Can Establish A Likelihood Of Success On The Merits**

UOCAVA protects the right of military and other overseas voters to have their absentee votes counted in Federal elections. 42 U.S.C. 1973 ff-1 et seq. State election officials violated the protections afforded by UOCAVA when they failed to mail absentee ballots to military and other overseas voters in sufficient time to permit these protected voters to complete and return the ballots so their votes can be counted. This Court has previously determined that “overseas ballots require on average 30 days for transit to and from the absentee voter.” See, U.S. v. Pennsylvania 1:04-CV-0830 (April 16, 2004). In the primary elections, where state officials failed to timely send out absentee ballots to UOCAVA protected voters, this Court extended the deadline for the receipt of the ballots, required the use of overnight mailing paid for by the Commonwealth, and required the Commonwealth to notify those voters whose UOCAVA protected rights had been violated of the extension. Id.

There is no question that the law was violated here. Defendants have acknowledged that they did not send out absentee ballots on time to all UOCAVA voters. In addition, Plaintiffs can demonstrate that Venango County and Montgomery County failed to send out absentee ballots to UOCAVA protected voters until October 12, 2004, and September 26, 2004, respectively. Further, Defendants failed to comply with the statute’s requirement that absentee ballots be sent to UOCAVA protected voters within 48 hours of the application’s approval.

Furthermore, Defendants were well aware that because of the uncertainty regarding the ballot status of Independent Party candidates, [the “Nader litigation”], the possibility existed that county boards of election would fail to send absentee ballots out on time. Due to these concerns, on September 21, 2004, Defendant Secretary of State issued a Notice of Amendment and

Instructions to all county contact persons for elections. (See Exhibit “D,” Notice of Amendment and Instruction to County Contact Persons for Elections). In that Notice, the Department of State apprised county boards of election of the fluid status of the Nader litigation, but warned that this uncertainty would not relieve county boards of the requirement, pursuant to Section 1305(a) of the Pennsylvania Election Code, 25 P.S. § 3146.1(a)-(h), to commence to deliver or mail official absentee ballots to UOCAVA protected voters by the statutory deadline and mail absentee ballots within 48 hours of approval of the absentee ballot application. *Id.* The Notice further cautioned that “it is vitally important that county boards of elections continue to deliver or mail official absentee ballots or special write-in ballots to all qualified absentee electors in the time required by Section 1305(a) of the Election Code – i.e., within 48 ours after approval of the applications for absentee ballots.” Given the fluid character of the ballot, the Notice advised the county boards of election to exercise “caution and prudence in the printing of official absentee ballots and consider the short-term option of using the special write-in absentee ballot.” *Id.*

Thus, at all times during the circuitous legal course of the Nader litigation, county boards of election had available the statutorily prescribed option of sending out the special write-in absentee ballot. *See* 25 P.S. § 3146.3(d). With that option available, there was no excuse for the failure of the county election boards to comply with statutory deadlines and risk the disenfranchisement of UOCAVA protected voters.

2. **Plaintiffs Will Suffer Irreparable Harm In The Absence Of Injunctive Relief**

Given the fact that many of Pennsylvania’s UOCAVA protected voters, including those located in remote or isolated areas where mail delivery is uncertain at best and where conditions under which these voters have to complete and return absentee ballots are fraught with danger and delay, it was imperative that state election officials strictly adhere to statutory deadlines.

These deadlines require state officials to commence to send out these absentee ballots by dates certain and, further, to send out ballots within 48 hours of the approval of a UOCAVA protected voter's application. State election officials violated these essential requirements. These violations of the statute, even without additional evidence of harm, permit and even compel a presumption of irreparable harm to the plaintiffs. See, e.g., Government of Virgin Islands, dept. of Conservation and Cultural Affairs v. Virgin Islands Paving, 714 F.2d 283, 286 (3d Cir. 1983), citing U.S. Postal Service v. Beamish, 466 F.2d 804 (3d Cir. 1972); Assisted Living Associates of Moorestown, L.D.C. v. Moorestown Township, 996 F. Supp. 409 (D.N.J. 1998).

3. **Any Harm To State Election Officials Is Far Outweighed By The Harm To UOCAVA Protected Voters**

UOCAVA protected voters, many of whom are fighting for their country in far distant remote and isolated areas under dangerous and limiting conditions, will lose their right to have their votes counted in the November 2, 2004 General Election because state election officials violated the statute. With the war in Iraq a major issue in this election, it is especially imperative that the members of the military actually waging that war have their votes counted.

In contrast, a fifteen-day extension for UOCAVA protected voters to return their ballots and the publication of that extension will result in, at most, a minor inconvenience to the Defendants. From November 2, 2004 until November 17, 2004, the date of the requested extension, county election boards will be counting all other votes cast on November 2. An extension to November 17 will not interfere with that count, nor will it interfere with the responsibility of Defendant Secretary of State to certify Pennsylvania's vote count to the Electoral College on or about December 13, 2004. The remaining 22 days between November 17 and December 9 will still permit that certification to occur on time.

Balancing any minor inconvenience to the Defendants, resulting from their violation of the statute, against the potential disenfranchisement of absentee military voters serving their country overseas demands the unequivocal conclusion that the greater harm will be visited on Plaintiffs and other similarly situated UOCAVA protected voters if the Court does not grant relief.

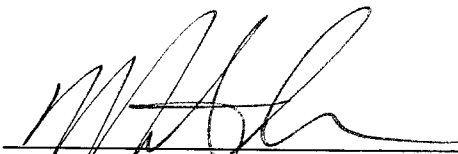
4. **An Injunction Is Clearly In The Public Interest**

When it enacted UOCAVA, Congress expressed its clear intent to assure the fundamental voting rights of military and certain other overseas voters and affirmed that protecting the rights of these voters is a matter of great public interest. By serving their country, service that includes the very real risks of injury and death, Plaintiffs should not also be required to forfeit or sacrifice their fundamental right to have their votes counted. The public has an undeniable interest, as reflected by UOCAVA, in ensuring the vigorous protection of the rights of Plaintiffs and others similarly situated to have their votes counted.

For the reasons set forth herein, Plaintiffs respectfully request that the Court grant the Motion for Temporary Restraining Order and Preliminary Injunction.

Respectfully submitted,

By:



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Attorney for Plaintiffs

Dated: October 27, 2004

Gov. Rendell calls for end to spread of misinformation on military, overseas absentee ballots.

Text of Oct. 25 press release.

HARRISBURG: Governor Edward G. Rendell today called for a stop to the continued spread of misinformation regarding military and overseas absentee ballots and encouraged the media and elected officials to come together to encourage all Pennsylvanians to exercise their right to vote.

During a conference call with reporters this afternoon, the Governor also released a letter he wrote to U.S. Senator Rick Santorum regarding the recent controversy in which he noted that Pennsylvania's county boards of elections have certified that all military and overseas ballots have been sent out in accordance with federal law, and that all of these ballots will be counted in accordance with law for the Nov. 2 General Election.

"There is no greater privilege we as Americans enjoy than that of our right to vote, and as Governor I have a constitutional obligation to protect that right while ensuring each vote is counted," said Governor Rendell. "I do not however have the power to unilaterally extend deadlines set by statute - and it is disingenuous for anyone who believes in the rule of law even to suggest such action."

Governor Rendell spoke with reporters after hundreds of concerned citizens being unfairly misled to believe military and overseas voters were not able to vote in the upcoming presidential election via absentee ballot called to request an extension. The Governor said he was offended by accusations of partisan politics and reassured voters that military and overseas voters will have their voices heard on Election Day.

"Accusations that partisanship is playing a role in the administering of the Pennsylvania election results are insulting, unfounded and deceitful," he said. "The people of Pennsylvania deserve better." Governor Rendell further noted that if credible evidence is presented in a timely manner that any county has not, in fact, complied with the law, the Commonwealth is prepared to seek an appropriate judicial remedy.

During a court hearing last week, the Commonwealth opposed U.S. Attorney General John Ashcroft's request for a second ballot, and for an extension of the absentee ballot deadline because all military and overseas ballots had been issued in time to be received and counted in accordance with law, and because a second absentee ballot would create significant voter confusion. After two days of hearings and arguments, U.S. District Judge Yvette Kane - who served as Secretary of the Commonwealth under Governor Tom Ridge and is intimately familiar with Pennsylvania election law and procedures - agreed with the Commonwealth position and denied the DOJ request.

The court ruled that all military and overseas absentee voters will have ample time to complete and return their ballots and their votes will be counted. As Judge Kane noted in her Memorandum and Order, the proposal by the federal government would have "invited unpredictability to an otherwise orderly and time tested elections process" and "may do more to disenfranchise overseas voters than the harm they seek to cure."

CONTACT: Kate Philips, 717-783-1116

COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF THE GOVERNOR  
HARRISBURG

October 25, 2004

THE GOVERNOR

The Honorable Rick Santorum  
United States Senate  
511 Dirksen Senate Building  
Washington, DC 20510

Dear Senator Santorum:

As Governor of the Commonwealth of Pennsylvania, I have a constitutional obligation to protect the right of every eligible Pennsylvania citizen to vote and to ensure that these votes are properly counted. This is the same duty that I discharged as Mayor and District Attorney of the City of Philadelphia. I believe that the right to vote is fundamental, and I will never allow that right to be compromised for any reason.

So let me be absolutely clear concerning the votes of our servicemen and women and other overseas Pennsylvania citizens: We have received written certifications from 65 of Pennsylvania's 67 counties that they have provided absentee ballots to military and overseas voters in accordance with applicable federal law. The two remaining counties have cured problems with the issuance of absentee ballots through an expedited mailing and ballot return process as explained below. *These certifications support the conclusion that all Pennsylvania military and overseas ballots have been sent out in accordance with federal law. All of these ballots will be counted in accordance with law for the November 2<sup>nd</sup> General Election.*

As you know, several weeks ago, Attorney General John Ashcroft through the United States Department of Justice (DOJ) requested a federal court order requiring Pennsylvania counties (a) to deliver to military and overseas voters a *second* absentee ballot that did not include the names of Ralph Nader and Peter Camejo and (b) to grant a two-week extension for the counting of military and overseas ballots cast in the November 2<sup>nd</sup> General Election. The Pennsylvania Republican and Democratic parties and the presidential campaigns were given notice of this court proceeding.

The commonwealth opposed Attorney General Ashcroft's request because all military and overseas ballots had been issued in time to be received and counted in accordance with law, and because a second absentee ballot would create significant voter confusion. After two days of hearings and arguments last week, United States District Court Judge Yvette Kane – who served as Secretary of the Commonwealth under Governor Tom Ridge and is intimately familiar with Pennsylvania election law and procedures – agreed with the commonwealth's position and denied the DOJ request.

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October 25, 2004  
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Some have noted that the commonwealth agreed to an extension of time for the return of military and overseas ballots for the April 2004 primary election. In fact, the commonwealth agreed to an extension for the primary election because many county boards of elections in March failed in their statutory duty to deliver and mail special write-in absentee ballots under the applicable statutory deadlines. Moreover, as a consequence of the late mailings, commonwealth officials were convinced that at least some overseas voters were unlikely to receive their absentee ballots in sufficient time to return them by the statutory deadline. Because many absentee ballots were delivered late in advance of the primary and to protect the rights of voters overseas, the commonwealth agreed to an extension of the filing deadline, which was memorialized by a federal court order.

Unlike the primary election, for the November 2<sup>nd</sup> General Election the county boards of elections (with two exceptions discussed below) have certified in writing that they delivered or mailed absentee ballots to military and overseas voters either by September 20<sup>th</sup> – the deadline under Pennsylvania law – or a day or two later to accommodate changes made to the absentee ballot required by state court actions on whether Nader and Camejo should appear on the General Election ballot.

We are aware of two relatively small counties that failed to deliver and mail ballots as required by law. When the Department of State learned of these counties' omissions in early October, it directed these counties to send out special write-in absentee ballots *immediately* by express mail and to provide military and overseas voters an expedited method of returning absentee ballots free of charge. Judge Kane and the Department of Justice approved of this remedy for these two counties.

Beyond these two counties, neither the DOJ nor any other voter or interested person has claimed in legal submissions or at the hearing last week that other county boards of elections failed to send absentee ballots to military or overseas electors as required by Pennsylvania law in time for these voters to receive and vote absentee ballots by the statutory deadline. As Judge Kane noted in her Memorandum and Order, the proposal by the federal government would have "invited unpredictability to an otherwise orderly and time tested elections process" and "may do more to disenfranchise overseas voters than the harm they seek to cure."

Despite these facts and the existence of a federal court decision on the matter, members of the media and others continue to call on me to extend the deadline for receipt of military and overseas ballots. As an attorney, you know that I do not have the power unilaterally to extend deadlines set by statute – and it is disingenuous for anyone who believes in the rule of law even to suggest such action. Moreover, even if I had the power to extend the deadline, I am convinced, based on my review of the facts and the well-reasoned and thorough opinion of Judge Kane, that there is no reason to do so. However, if any credible evidence is presented in a timely manner that any county has not in fact complied with the law, the commonwealth is prepared to seek appropriate judicial remedy.

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As we enter the last week of this election cycle, I am confident that despite our philosophical differences, we will be united in continuing to protect the voting rights of our citizens.

Sincerely,

Handwritten signature of Edward G. Rendell in black ink.

Edward G. Rendell  
Governor

Delaware County Times 10/26/04.

More than 14,000 Delaware County residents have applied for absentee ballots, the most in almost 30 years, according to Delaware County Public Relations Director William Lovejoy.  
"It's in excess of 14,000 and still growing," Lovejoy said Monday afternoon.

10/27/04

Voters have until 5 p.m. today to apply for absentee ballots at the Delaware County Election Bureau, on the first floor of the Government Center in Media.

Lovejoy noted that absentee voters can both apply for their ballots and vote today at the election bureau. They should be sure to bring photo identification.

"They can come here, fill out their application and they can actually vote here. We have a table with a shield around it," explained Lovejoy.

Absentee voters have until 5 p.m. Friday to return their ballots to the election bureau. Absentee ballots for presidential candidates can be returned up until Election Day, noted Gov. Ed Rendell during a press conference Monday afternoon.

"Up until election night," he stressed.

The Democratic governor was responding to criticism from U.S. Sen. Rick Santorum (R-Pa.) and other Republican legislators for not petitioning the courts to extend the deadline for overseas civilians and military absentee ballots. Recent polls indicate members of the military favor George W. Bush over John Kerry.

"I want every overseas person to have their vote counted," said Rendell. "No one elected me emperor of Pennsylvania. I'm a governor, and I can't change the law."

Last week, U.S. District Judge Yvette Kane ruled Rendell was correct in refusing a U.S. Justice Department request to order new absentee ballots for military families and overseas voters, as well as to extend the deadline for return of the ballots until after the election because of confusion over Ralph Nader's ballot status. While Nader is not legally on Pennsylvania ballots, his name appears on some. Rendell said votes for Nader would be recognized as write-ins.

The governor said two Republican-dominated counties, Venango and Huntington, had not met the state-mandated Sept. 20 deadline for mailing out absentee ballots to overseas voters, so Kane approved sending them via express mail with an express return envelope enclosed.

Rendell said the remaining 65 Pennsylvania election bureaus sent out their absentee ballots on time. Lovejoy said the Delaware County election bureau met the Sept. 20 deadline.

"If I receive any credible evidence that the counties didn't do their jobs, I will go into court with Senator Santorum," said the governor.

Rendell obtained court orders to extend by three weeks the absentee deadline for military families and overseas voters in the April 27 primary election because a record number of challenges to nominating petitions delayed mailing of the ballots.

But he noted Kane ruled there was no testimony from federal officials that any overseas or military voters had expressed concern about the right to vote in the Nov. 2 election.

Mary Dougherty of Haverford Township was among many Pennsylvanians who called Rendell's office Monday to register her disapproval of his decision not to petition the court for an overseas absentee ballot extension.

She isn't sure if her 23-year-old son, Marine Lt. Matt Dougherty, who is based in Okinawa, or six soldiers she writes to in Iraq have received their absentee ballots or if they will be returned in time. Dougherty noted the troops in Iraq are less likely to get their ballots because they do not have posts for mail pick-up.

"They're over there fighting for other people, the Iraqis, so they have the right to vote, so they can enjoy the freedoms we have, and at present, Gov. Rendell is denying them rights," maintained the 56-year-old former nurse, a registered Independent.

Rendell said he resents any implication that he is not supportive of the troops or wants to deny them the right to vote. He noted that he recently attended the viewing of Upper Darby High School graduate Lt. Col. Mark Phelan who was killed Oct. 13 when his convoy was bombed in Mosul, Iraq. Phelan was a member of the 416th U.S. Army Reserve Unit, the same unit with which Rendell once served.

The governor did concede that the overseas absentee ballot deadline statute should be reviewed after this election.

"Maybe the answer is to do them all by express mail, and it would be better to extend the deadline for military and overseas voters," said Rendell.

10/27/04

Commonwealth of Pennsylvania  
Department of State  
September 21, 2004

**SUBJECT:** 2004 General Election Ballot Certification – Notice of Amendment and Instructions  
**TO:** All County Contact Persons for Elections  
**FROM:** Monna J. Accurti, Commissioner  
Bureau of Commissions, Elections and Legislation

On Friday, September 17, 2004, the Secretary of the Commonwealth issued the November 2, 2004 General Election Ballot Certification. In the instructions that accompanied that Certification, we alerted you to four cases pending in the Commonwealth Court or the Supreme Court of Pennsylvania that might require the Secretary to amend the ballot certification at any time. We provided to you (as Appendix B) the names of candidates – with the names of the minor political party or political body supporting the candidate – whose nomination papers continue to be challenged in the courts through formal objections. We promised to inform you immediately of any changes in those cases as they occur and to amend the certification as necessary.

**AMENDED CERTIFICATION**

Yesterday afternoon, after 2:00 P.M., the Supreme Court of Pennsylvania issued an Order in *In Re: Nomination Paper of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004*, No. 154 MAP 2004. In that Order, the Supreme Court reversed and vacated the August 30, 2004, order of the Commonwealth Court of Pennsylvania (which had set aside the nomination papers of Ralph Nader and Peter Miguel Camejo and “directed” the Secretary of the Commonwealth “not to print the names of Ralph Nader and Peter Miguel Camejo on the ballot for the 2004 General Election”). The Supreme Court remanded the remaining, unresolved objections made to the Nader-Camejo nomination papers and directed Commonwealth Court to hear their those objections “on an expedited basis.”

Because the Supreme Court has vacated the Commonwealth Court’s order setting aside the nomination papers of Ralph Nader and Peter Miguel Camejo as Candidates of an Independent Political Body for President and Vice President in the General Election of November 2, 2004, the Secretary of the Commonwealth must *amend* his 2004 General Election Ballot Certification. Based on the order of the Supreme Court, *effective immediately*, all ballots for the November 2, 2004 General Election must include, under the Presidential Candidate Office Block entitled “PRESIDENTIAL ELECTORS”, the following candidates and political body:

Ralph Nader	INDEPENDENT
VICE PRESIDENT:	Peter Miguel Camejo

The political parties and political bodies will be arranged in the following order under the Presidential Candidate Office Block:

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Democratic, Republican, Libertarian, Green, Constitution and Independent.

This amended ballot certification will remain in effect until further order of the Commonwealth Court or the Supreme Court of Pennsylvania. However, please be aware that, on remand, the Commonwealth Court of Pennsylvania could again sustain the objections made to the nomination papers of Ralph Nader and Peter Miguel Camejo and again set aside the nomination papers and direct the Secretary of the Commonwealth not to print the names of Nader and Camejo on the ballot for the November 2004 General Election. The same is true of the other candidates whose nomination papers are the subject of objections pending in the Commonwealth Court or an appeal in the Supreme Court of Pennsylvania. See Appendix B to the September 17, 2004 instructions.

### INSTRUCTIONS REGARDING ABSENTEE BALLOTS

Under section 1305(a) of the Pennsylvania Election Code (25 P.S. § 3146.5(a)), county boards of elections were required, *no later than Monday, September 20, 2004*, to commence to deliver or to mail official absentee ballots to those qualified absentee electors described by sections 1301(a) to 1301(h) of the Election Code (25 P.S. §§ 3146.1(a)-(h)) – generally, military electors and absentee electors who are living or expect to be outside the territorial limits of the United States on Election Day for reasons of their duties, occupation or business. In the event that official absentee ballots are not yet printed in proper form, the county boards of elections are required by section 1305(a) to use special write-in absentee ballots for delivery to these qualified absentee electors. As additional absentee ballot applications are received from these qualified absentee electors, the county boards of elections must deliver or mail official absentee ballots or special write-in absentee ballots *within 48 hours after approval of the application*.

After the Secretary of the Commonwealth on September 17, 2004, certified the ballot for the November 2, 2004 General Election, we understand that some county boards of elections prepared official absentee ballots for delivery or mailing on Monday, September 20 to those qualified absentee electors described by sections 1301(a) to (h) of the Election Code whose applications were approved by the county board of elections. Other county boards, we believe, planned to continue to use special write-in absentee ballots until official absentee ballots could be printed and made available. Both procedures are sanctioned by section 1305(a) of the Election Code.

The Department assumes that, in conformity with section 1305(a) of the Election Code, county boards of elections on September 20 did deliver or mail official absentee ballots or special write-in absentee ballots to those qualified absentee electors entitled to receive them under the statute. On that date, it was proper to use an official absentee ballot or a special write-in absentee ballot candidate's list that did *not* include the names of Ralph Nader and Peter Miguel Camejo as candidates for President and Vice President of the United States, inasmuch as the certification of the Secretary of the Commonwealth did *not* include the names of those candidates in accordance with the August 30, 2004, mandate of the Commonwealth Court.

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However, as a result of the Supreme Court's order, *effective immediately* a county board of elections *may not* deliver or mail to any qualified absentee elector either an official absentee ballot or a candidate's list accompanying a special write-in absentee ballot *unless it includes the names of Ralph Nader and Peter Miguel Camejo as Independent candidates for President and Vice President of the United States, respectively, and includes the Independent political body in the list of parties and political bodies for which electors may cast their votes.*

### TIMELY DELIVERY AND MAILING OF ABSENTEE BALLOT MATERIALS

Irrespective of the Secretary's amendment to the certification of the ballot, it is vitally important that county boards of elections continue to deliver or mail official absentee ballots or special write-in absentee ballots to all qualified absentee electors in the time required by section 1305(a) of the Election Code – *i.e.*, within 48 hours after approval of the applications for absentee ballot. To facilitate timely delivery or mailing of proper absentee ballot materials to qualified absentee electors as provided by section 1305(a) of the Election Code, county boards may use *either* official absentee ballots or special write-in absentee ballots, *as circumstances dictate.*

As we stated, Commonwealth Court on remand could again sustain the objections to the Nader-Camejo nomination papers and direct the removal of their names from the ballot. It is difficult to predict when Commonwealth Court might act on the objections to the Nader-Camejo nomination papers or whether it will sustain the objections. However, it is worth noting that Commonwealth Court on September 9, 2004, expressed its opinion that Nader and Camejo are "unlikely to succeed" in defending against the objections that have been made to the signatures contained on the nomination papers in the event of a remand to that court. Thus, because it appears likely to Commonwealth Court at least that the objections to the Nader-Camejo nomination papers ultimately will be sustained and the names of Nader and Camejo removed from the ballot, the Department of State recommends that county boards of elections exercise caution and prudence in the printing of official absentee ballots and consider the short-term option of using the special write-in absentee ballot until Commonwealth Court has ruled on the objections.

We understand that some county boards of elections might already have printed official absentee ballots that do not now conform to the amended ballot certification because they do not include the names of Ralph Nader and Peter Miguel Camejo or the Independent political body. Though those absentee ballots may not now be properly used, they could again become proper absentee ballots in the event that Commonwealth Court on remand should sustain the objections to the Nader-Camejo nomination papers and direct the removal of their names from the ballot. Therefore, you should retain those ballots that you have printed for use in those circumstances.

### DELIVERY OR MAILING OF SECOND ABSENTEE BALLOTS

As the Department has previously suggested, after Commonwealth Court finally determines whether the names of Nader and Camejo are to be printed on the November 2, 2004 General Election ballot, it will be necessary for the county boards of elections to deliver or mail a second, accurate absentee

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ballot to those qualified absentee electors who received a ballot or candidate's list that included candidates who will not appear on the General Election ballot or that excluded candidates who will appear on the ballot. Thus, it is important that the county board of elections keep careful track of the ballot that the board sent to each qualified absentee elector. When it is time to send a second absentee ballot, the Department will provide explicit instructions to you.

Should you have any questions, please feel free to contact Jonathan Marks, of my staff, at (717) 787-5280.