

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE OF PENNSYLVANIA

REITZ, et al.,	:	
Plaintiffs,	:	
	:	
v.	:	1:04-CV-02360
	:	Judge Kane
THE HONORABLE EDWARD	:	
G. RENDELL et al.,	:	[Filed Electronically]
Defendants.	:	

MEMORANDUM OF LAW OF *AMICI* PENNSYLVANIA STATE SENATORS ROBERT C. JUBELIRER, DAVID J. BRIGHTBILL, JEFFREY E. PICCOLA, GIBSON E. ARMSTRONG, JOE CONTI, JAKE CORMAN, CHARLES W. DENT, JANE M. EARLL, EDWIN B. ERICKSON, JOHN R. GORDNER, STEWART J. GREENLEAF, CHARLES D. LEMMOND, ROGER A. MADIGAN, HAROLD F. MOWERY, JR., JANE CLARE ORIE, DOMINIC F. PILEGGI, JOHN R. PIPPI, TERRY L. PUNT, JOHN C. RAFFERTY, JR., JAMES J. RHOADES, ROBERT D. ROBBINS, JOE SCARNATI, ROBERT J. THOMPSON, ROBERT M. TOMLINSON, MICHAEL L. WAUGH, NOAH W. WENGER, DON WHITE, MARY JO WHITE, ROBERT C. WONDERLING IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTEREST OF *AMICI*

Amici Senators participated in enacting Act No. 2004-97 to make Pennsylvania election law compliant with federal law. Some of the *Amici* Senators, in various state senatorial districts that encompass many of the Commonwealth's sixty-seven counties, are running for re-election in the November 2, 2004 General Election. *Amici* Senators are concerned that all Pennsylvania electors who are overseas and who have requested absentee ballots (many of whom

are constituents of the Senators) be able to cast their ballots and to have them counted. This memorandum of law is in support of Plaintiffs' motion for a temporary restraining order and preliminary relief.

ARGUMENT

Many absentee ballots for overseas electors were sent out late. As this Court noted on page 3 of its April 16, 2004 order in *United States v. Commonwealth*, No. 1:CV-04-830, "overseas ballots require on average 30 days for transit to and from the absentee voter," and as this Court noted on page 4 of its October 10, 2004 order and memorandum in the same case, it heard testimony that "it requires approximately two weeks to deliver mail to service members in Afghanistan and Iraq, although this process has taken as long as 29 days." Accordingly, even if overseas absentee ballots were timely mailed, but *a fortiori* if mailed late, overseas electors, especially combat soldiers in Afghanistan and Iraq, are likely not to have sufficient time to receive their ballots, fill them out, and transport them back to the military mail post so that they will arrive at Pennsylvania's sixty-seven county boards of election by the deadline. Their fundamental constitutional right to vote would thus be violated. State officials who allow this to happen will also be in violation of the Uniformed and Overseas Citizens Absentee Voting Act, which mandates that "[e]ach state shall ... permit absent uniformed services voters and overseas voters ... to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 42 U.S.C. §§1973ff-1(a).

The nature of this problem is such that the full extent of it will not be known until the deadline for return is passed. As this Court noted on page 1 of its October 10, 2004 memorandum and order, the sixty-seven county election offices issued 26,739 absentee ballots for the November 2, 2004 election. There is no way to know how many overseas voters efforts to meet the deadline will have been frustrated until the absentee ballots are counted, after the deadline is passed.

One solution is to extend the deadline for return, as this Court did in its April 10, 2004 order. Plaintiffs have requested such relief and *amici* support it, both as preliminary and final injunctive relief.

There is additional relief that would help protect the fundamental voting rights of these citizens while the Court considers this case. I.e., this Court could require all overseas absentee ballots received after the statutory deadline to be preserved, with their envelopes, pending further order of the Court. Mishandling of the overseas ballots while the Court considers further relief could deprive overseas electors of the fundamental right to have their votes counted for this election cycle. Any such retention requirement imposed by this Court should be accompanied by an order requiring the Secretary of the Commonwealth to immediately transmit it to all sixty-seven county boards of election.

This Court could also direct the Secretary to exercise the authority provided to him by Section 201(e) of the Pennsylvania Election Code of 1937, P.L. 1333, *as amended*, 25 P.S. §2621(e), to "demand such additional reports on special matters [from county boards of elections] as he may deem necessary," to require daily reports on the number of overseas absentee ballots received after the deadline. The Secretary, in turn, should be required to report such data to the Court and to the parties.

These additional measures should be imposed by the Court both to preserve the Court's ability to adjudicate this matter, by securing needed documentation, and to assure that the rights of overseas voters are protected during the pendency of litigation.

CONCLUSION

Wherefore, *Amici* Senators ask that this Court grant the relief sought by the plaintiffs, together with supplemental relief as outlined above.

Respectfully submitted,

October 29, 2004

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CERTIFICATE OF SERVICE

I certify that, on October 29, 2004, I caused a copy of the foregoing Memorandum of Law of *Amici* Senators to be served upon the following by hand delivery:

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