

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE OF PENNSYLVANIA

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

COMPLAINT

The Republican State Committee and its Chairman, Alan Novack, for their complaint state:

1. The Republican State Committee (“RSC”) and Alan Novack, Chairman of the RSC, plaintiffs in intervention, bring this action to protect the rights of all qualified overseas electors of the Commonwealth of Pennsylvania entitled by federal law to vote by absentee ballot in the November 2, 2004 election, including the thousands of qualified electors now on active duty overseas with our Armed Forces.

2. The RSC also seeks to protect and preserve its rights, and the rights of the members of the Republican Party in Pennsylvania, to associate together for political purposes and to put forward a slate of candidates for consideration by all qualified electors of the Commonwealth of Pennsylvania, including those legally entitled to vote by absentee ballot, during the general election to be held on November 2, 2004.

Parties

3. The RSC, the operating arm of the Republican Party in Pennsylvania, is the state committee of a recognized political party under Section 801 of the Pennsylvania Election Code, 25 P.S. §2831.

4. Alan Novack is the Chairman of the RSC and, as such, is responsible managing and directing the undertakings of the RSC.

5. The Honorable Edward G. Rendell is Governor of Pennsylvania and is as the person responsible for the execution of the laws of the Commonwealth of Pennsylvania.

6. Honorable Pedro A. Cortés is the Secretary of the Commonwealth, vested with powers and duties under the Pennsylvania Election Code and responsible for certifying the results of elections.

7. RSC and Novack seek injunctive relief against the defendants in order to prevent immediate and irreparable harm resulting from the threatened deprivation of constitutional rights and rights otherwise created and secured by federal law.

Jurisdiction & Venue

8. This action arises under federal law and is brought pursuant to 42 U.S.C. §1983 to secure rights created by the federal law, including the fundamental right to vote and the right to associate as a political party. The Court has jurisdiction over this action pursuant to 28 U.S.C. §1331.

9. Venue is appropriate in this district pursuant to 28 U.S.C. §1391.

Background

10. The RSC has put forth a slate of candidates for a vote by the qualified electors of the Commonwealth of Pennsylvania on November 2, 2004.

11. The RSC seeks to ensure that all qualified electors of the Commonwealth of Pennsylvania, including all qualified electors who are entitled to vote by absentee ballot, have an opportunity to exercise their fundamental right to vote and, if they so chose, to vote for the candidates supported by the RSC.

12. Members of Republican Party in Pennsylvania include qualified electors of the Commonwealth of Pennsylvania who are overseas and, in many cases, in the military service of the United States.

13. On information and belief, qualified electors of the Commonwealth of Pennsylvania, including, but not limited to, members of the Republican Party who are overseas and, in many cases, in the military service of the United States, submitted timely and otherwise proper applications for absentee ballots.

14. On information and belief, absentee ballots were not mailed or delivered to qualified electors of the Commonwealth of Pennsylvania who are overseas and, in many cases, in military service, by the deadlines established by the Pennsylvania Election Code.

15. On information and belief, absentee ballots were not mailed or delivered to qualified electors of the Commonwealth of Pennsylvania who are overseas and, in many cases, in military service, including, but not limited to, electors who are members of the Republican Party, sufficiently in advance of the November 2, 2004 election to permit those qualified electors to vote by absentee ballot.

16. On information and belief, absentee ballots were not mailed or delivered to qualified electors of the Commonwealth of Pennsylvania who are overseas in the military service of the United States, including, but not limited to, electors who are members of the Republican Party, far enough in advance of the deadline for receipt of absentee ballots by county boards of election established by the Pennsylvania Election Code to allow those qualified electors to meet the deadline for receipt.

17. To date, the defendants have failed to take steps necessary to ensure that all qualified voters of the Commonwealth of Pennsylvania who are legally entitled to do so are permitted to vote by absentee ballot.

18. As a result of the conduct described above, unless the relief sought herein is granted, the members of the Republican Party, whose interests are represented by the RSC, and also the RSC as an entity as well as its leadership, will suffer immediate and irreparable harm in the form of the deprivation of the fundamental right to vote and the fundamental right to associate as well as the deprivation of the right to vote by absentee ballot conferred upon certain qualified electors by 42 U.S.C. §1973ff-1(a)(1).

Count I
Violation Of 42 U.S.C. §1973ff-1(a)(1)

19. Paragraphs 1-18 are incorporated herein.

20. In the absence of the injunctive relief sought herein, the combined actions and omissions of the Commonwealth's election system will deprive otherwise qualified electors of the right "to vote by absentee ballot in general ... elections for Federal office." 42 U.S.C. §1973ff-1(a)(1).

Count II
Preemption

21. Paragraphs 1-18 are incorporated herein.

22. In light of the Supremacy Clause of the United States Constitution, provisions of the Pennsylvania Election Code are preempted, to the extent they conflict with mandatory provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §1973ff-1 *et seq.*.

23. The deadline for the receipt of absentee ballots in 25 P.S. § 3146.8(a) is preempted, as applied in connection with the November 2, 2004 election, because it conflicts with the mandate of 42 U.S.C. § 1973ff-1(a)(1) that "[e]ach State shall ... permit absent uniformed services voters and overseas voters ... to vote by absentee ballot in general ... elections."

Count III
Deprivation Of The Fundamental Right To Vote

24. Paragraphs 1-18 are incorporated herein.

25. All qualified electors of the Commonwealth of Pennsylvania have a constitutionally protected, fundamental right to vote in the election be held on November 2, 2004.

26. In the absence of the injunctive relief sought herein, the Commonwealth's failure to ensure timely delivery or mailing of absentee ballots will violate the Fourteenth Amendment to the United States Constitution by depriving certain qualified electors of their fundamental right to vote.

27. The enforcement by defendants of the deadlines established by the Pennsylvania Election Code for the receipt of absentee ballots will violate the Fourteenth Amendment to the United States Constitution by depriving certain qualified electors of their fundamental right to vote.

Count IV
Deprivation Of The Right Of Freedom Of Association

28. Paragraphs 1-18 are incorporated herein.

29. All qualified electors of the Commonwealth of Pennsylvania have a constitutionally protected, fundamental right to associate with, and support, the political party and candidates of their choosing.

30. In violation of the First and Fourteenth Amendments to the United States Constitution, in the absence of the injunctive relief sought herein, the Commonwealth's failure to ensure timely delivery or mailing of absentee ballots to overseas qualified electors will deprive certain members of the Republican Party, represented herein by the RSC, of their fundamental right to associate.

31. In violation of the Fourteenth Amendment to the United States Constitution, in the absence of the injunctive relief sought herein, the enforcement by the Commonwealth of Pennsylvania of the deadlines established by the Pennsylvania Election Code for the receipt of absentee ballots will deprive RSC and members of the Republican Party with the opportunity to present a slate of candidates to all qualified voters of the Commonwealth of Pennsylvania.

WHEREFORE, the Republican State Committee and Alan Novack request that the Court:

(a) With respect to the election to be held on November 2, 2004, declare unlawful, suspend, and enjoin the defendants from enforcing, the deadline for receipt of overseas absentee ballots by county boards of elections established by 25 P.S. §3146.8(a);

(b) Order defendants to take all steps necessary to secure, segregate and maintain the integrity of all overseas absentee ballots returned to county boards of elections after 5 p.m. on October 29, 2004 and prior to 5 p.m. on November 17, 2004;

(c) Order that overseas absentee ballots received by county boards of elections after 5 p.m. on October 29, 2004 but prior to 5 p.m. on November 17, 2004 be considered timely and included in a post-election canvassing of overseas absentee ballots received after the deadline and requiring the Secretary to obtain reports of such canvassing and to provide them to the Court and the parties;

(d) Award the Republican State Committee and Alan Novack their attorney's fees and costs of suit; and

(e) Provide such other relief as is just and proper.

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
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