

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

MCCAIN-PALIN 2008, INC.,

Plaintiff,

v.

JEAN CUNNINGHAM,  
Chairman, Virginia State Board of Elections;  
HAROLD PYON,  
Vice-Chairman, Virginia State Board of  
Elections;  
and NANCY RODRIGUES,  
Secretary, Virginia State Board of Elections,

Civil Action Number 3:08cv709

Defendants.

**ORDER**

This matter is before the Court on the plaintiff's motion for a temporary restraining order and preliminary injunction. To ensure the preservation of late absentee ballots pending the resolution of this matter, the Court GRANTS the motion as follows:

- 1) The defendants shall convey a copy of this Order to:
  - a. The local electoral boards and registrars by means of the local registrars' email addresses by 5:00 p.m. on November 5, 2008; and
  - b. The clerks of Virginia circuit courts by 5:00 p.m. on November 5, 2008 or within six hours of the plaintiff providing the defendants with the email addresses, or only if email addresses are unavailable, the fax numbers for these clerks, whichever is later.

2) Beginning at close of business on November 6, 2008 and continuing each business day thereafter until further order of this Court, the secretary of each local electoral board or the registrar shall ensure that all absentee ballots (including both state-issued and federal write-in absentee ballots) received after 7:00 p.m. on November 4, 2008, by the electoral board or any member thereof, or by any registrar or other local election official, shall be handled as follows:

a. Information pertaining to the absentee ballot, including the date received by the local electoral board, shall be entered on the absentee applicant list maintained by the local electoral board, and by email or fax, the local electoral board shall make such information available on a daily basis, if requested, to representatives of the campaigns for President of the United States.

b. The outside envelope carrying such absentee ballot shall not be opened, but shall be date-stamped or otherwise marked to reflect the date on which it was received. The unopened outside envelope and its contents shall be placed for storage in a sealable storage container, such as an opaque envelope or plastic box (“storage container”).

c. The storage container containing absentee ballots shall be sealed and, on the face thereof, the following information shall be written:

- i. The County or City and date of the election;
- ii. The total number of absentee ballots contained within the storage container; and
- iii. The date that the storage container was sealed.

d. The information recorded on the face of the storage container shall be recorded by the secretary of the local electoral board or registrar and made available to the public for inspection and copy. In addition, each day, the secretary shall cause such information to be faxed, if requested, to representatives of the campaigns for President of the United States.

e. The sealed storage container shall be hand-delivered to the clerk of the circuit court of each locality for safekeeping at the end of each business day.

f. The clerk to whom the storage containers are delivered shall, without breaking the seal on said containers, (a) place said containers in a vault or room not open to the public or to anyone other than the clerk and his staff; and (b) cause such vault or room to be securely locked except when access is necessary for the clerk and his staff.

g. The clerk of each circuit court shall retain custody of these sealed storage containers until further order of this Court.

3) If it is determined that an absentee ballot has been received in an envelope other than the customary outside envelope, such material shall be handled in the foregoing manner to the extent possible.

4) By not later than close of business on November 5, 2008, the Secretary of the State Board of Elections shall transmit (or cause to be transmitted) to counsel for the plaintiff a copy of such documentation as is maintained in the VERIS System, grouped by locality and precinct, containing the names but not social security numbers of each absentee voter, and showing the date each request for an absentee ballot was processed, the date the absentee ballot envelope label was printed, and the date, if any, the voted absentee ballot was processed by the local electoral board or registrar.

5) The defendants shall respond to the merits of this matter by 5:00 p.m. on November 6, 2008; the plaintiff's reply, if any, is due by 1:00 p.m. on November 7, 2008. A hearing on this matter will be held at 2:30 p.m. on November 10, 2008.

IT IS SO ORDERED.

The Clerk will send copies of this Order to all counsel of record.

November 4, 2008  
DATE

\_\_\_\_\_/s/\_\_\_\_\_  
RICHARD L. WILLIAMS  
SENIOR UNITED STATES DISTRICT JUDGE