

# Exhibit D

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IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
STATE OF TENNESSEE; BRYANT MILLSAPS,  
SECRETARY OF STATE OF THE  
STATE OF TENNESSEE; WILL BURNS,  
COORDINATOR OF ELECTIONS OF THE  
STATE OF TENNESSEE,  
  
Defendants.

CIVIL ACTION NO.  
**8 90 - 0958**  
TEMPORARY RESTRAINING  
ORDER AND PRELIMINARY  
INJUNCTION

The Court, having considered the Application of the United States for a Temporary Restraining Order and Motion for Preliminary Injunction and the declarations filed in support thereof, and after service and notice to the State of Tennessee, and having heard counsel for the parties, hereby finds that:

1. Defendants have failed to take such steps as are necessary to ensure that certain overseas citizens who are duly qualified to vote absentee in the November 6, 1990, general election and who have applied in a timely fashion for absentee ballots by electronic transmission, will be given a reasonable opportunity to execute and return such ballots before the polls close on Tuesday, November 6, 1990.

2. There are reasonable grounds to believe that defendants' failure constitutes a violation of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff et seq.

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3. Military personnel deployed in the Middle East as the result of Operation Desert Shield who are eligible to vote in the State of Tennessee under the aforementioned Act will be irreparably injured by defendants' failure because these military personnel have not been given a reasonable opportunity to apply for, execute and return absentee ballots before the polls close on Tuesday, November 6, 1990 and, as such, they will effectively be denied their right to vote in the November 6, 1990 general election.

4. Issuance of this order will serve the public interest by protecting the right to vote of American citizens overseas, specifically Operation Desert Shield personnel, as that right is set forth in the Uniformed and Overseas Citizens Absentee Voting Act.

5. The degree of harm, if any, that may be suffered by defendants as a consequence of this order is insignificant and, in any event, is outweighed by the irreparable injury which overseas military voters would suffer if this Order were not entered.

WHEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED THAT:

[a] The defendants, their agents, officers, and employees, and all those persons in active concert or participation with them, are restrained and enjoined from failing or refusing to take such steps as are necessary to ensure that military personnel, deployed as part of Operation Desert Shield, who are duly qualified to vote absentee in the November 6, 1990 general

election and who have applied in a timely fashion for absentee ballots by electronic transmission ("fax"), will be given a reasonable opportunity to execute and return such ballots and have their ballots counted. Specifically, defendants shall transmit via fax or some other expeditious means of mailing an absentee ballot to those military personnel deployed as part of Operation Desert Shield who have sent, via electronic transmission, a timely absentee ballot application to the defendants or agents thereof. If such absentee ballots are received by defendants or agents thereof on or before the close of business on November 21, 1990 (and such ballots would have been counted as validly cast ballots if they had been received by the close of the polls on November 6, 1990), defendants shall count those ballots as validly cast ballots.

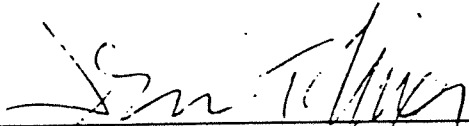
[b] It is further ORDERED that the defendants shall notify the Director of the United States Department of Defense's Federal Voting Assistance Program (FVAP) as soon as this order has been signed and request that the FVAP take such action as is necessary to notify these voters of the extension of time for receipt by Tennessee election officials of such ballots. The state shall assist the FVAP in whatever way necessary to publicize such extension of time.

[c] It is further ORDERED that within 60 days after the November 6, 1990 general election, defendants shall file a report with this Court which sets forth the action taken by the defendants pursuant to this Order. A copy of this report shall

be served on counsel for the United States of America. Such report shall include the details respecting those military personnel deployed as part of Operation Desert Shield and who have requested in a timely fashion via electronic transmission (i.e., fax) an absentee ballot for the November 6, 1990 election.

[d] It is further ORDERED that the Court sets November \_\_\_\_\_, 1990, at \_\_\_\_\_ o'clock, United States Courthouse, Nashville, Tennessee, as the time and place for the defendants to be heard, if they deem necessary, to seek dissolution or modification of this Order.

Dated this 5<sup>th</sup> day of November, 1990.

  
UNITED STATES DISTRICT JUDGE