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FILED

JUN 2 1992.

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AT 8:30 _____ M
WILLIAM T. WALSH
CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

| | | |
|---------------------------------------|---|--------------------------------|
| UNITED STATES OF AMERICA, | : | HONORABLE |
| Plaintiff, | : | Civil Action No. 92-2403 (MLP) |
| v. | : | <u>CONSENT DECREE</u> |
| STATE OF NEW JERSEY; | : | |
| DANIEL J. DALTON, SECRETARY OF STATE | : | |
| OF THE STATE OF NEW JERSEY; | : | |
| ATLANTIC COUNTY BOARD OF ELECTIONS; | : | |
| BERGEN COUNTY BOARD OF ELECTIONS; | : | |
| BURLINGTON COUNTY BOARD OF ELECTIONS; | : | |
| CAMDEN COUNTY BOARD OF ELECTIONS; | : | |
| CAPE MAY COUNTY BOARD OF ELECTIONS; | : | |
| CUMBERLAND COUNTY BOARD OF ELECTIONS; | : | |
| ESSEX COUNTY BOARD OF ELECTIONS; | : | |
| GLOUCESTER COUNTY BOARD OF ELECTIONS; | : | |
| HUDSON COUNTY BOARD OF ELECTIONS; | : | |
| HUNTERDON COUNTY BOARD OF ELECTIONS;; | : | |
| MERCER COUNTY BOARD OF ELECTIONS; | : | |
| MIDDLESEX COUNTY BOARD OF ELECTIONS;; | : | |
| MONMOUTH COUNTY BOARD OF ELECTIONS; | : | |
| MORRIS COUNTY BOARD OF ELECTIONS; | : | |
| OCEAN COUNTY BOARD OF ELECTIONS; | : | |
| PASSAIC COUNTY BOARD OF ELECTIONS; | : | |
| SALEM COUNTY BOARD OF ELECTIONS; | : | |
| SOMERSET COUNTY BOARD OF ELECTIONS; | : | |
| SUSSEX COUNTY BOARD OF ELECTIONS; | : | |
| UNION COUNTY BOARD OF ELECTIONS; | : | |
| WARREN COUNTY BOARD OF ELECTIONS, | : | |
| Defendants. | : | |

A. STIPULATIONS OF THE PARTIES

The United States of America, plaintiff; the State of New Jersey; Daniel J. Dalton, Secretary of State of the State of New Jersey; and the 21 New Jersey County Boards of Elections, defendants, stipulate and agree that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff et seq. ("the Act").

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1973ff-4 and 28 U.S.C. 1345.

3. The Defendant State of New Jersey is charged with the responsibility of assuring that New Jersey elections laws, as applied, comply with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff et seq.

4. Defendant Daniel J. Dalton, sued in his official capacity as Secretary of State of the State of New Jersey, is responsible for certifying the results of federal elections in the state. County clerks receive absentee ballot applications and are responsible for mailing absentee ballots to voters. County boards of elections receive, count, and tally such ballots.

5. The United States, by this action, seeks injunctive relief to ensure that United States citizens living abroad, who are qualified to vote in the federal primary election to be held in the State of New Jersey on June 2, 1992, and who have filed timely applications for absentee ballots, will be given a reasonable opportunity to execute and return such ballots and thus to have their ballots counted.

6. The Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1, provides, in pertinent part, that "[e]ach State shall-- (1) permit absent uniformed services voters and overseas voters . . . to vote by absentee ballot in . . . primary . . . elections for Federal office."

7. In the June 2, 1992 federal primary election the voters of New Jersey will elect delegates to national party conventions for the purpose of nominating candidates for the offices of President and Vice President of the United States, will vote in presidential preference primaries for candidates for President, and will nominate candidates for the United States House of Representatives.

8. Election officials of the State of New Jersey have received timely requests for absentee ballots from overseas voters, who are entitled to vote pursuant to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act.

9. Under New Jersey law, absentee ballots received after 8:00 p.m. on the date of the election are not counted.

10. In order to allow overseas citizens a fair opportunity to vote by absentee ballot, election officials in New Jersey must mail the ballots to the voters on a date sufficiently in advance of election day to allow the voter to receive the ballot, cast his or her vote, and return the ballot to the office of the election official by closing of the polls on election day. The United States Postal Service estimates that a period of 7 to 10 days is a reasonable benchmark from the time of posting to the time of delivery of international mail. The United States Department of State has estimated that 10 to 14 is a reasonable one-way international benchmark. The Military Postal Service Agency recommends that at least 30 days be allowed for election material to make a complete round trip to and from an overseas locale. The Federal Voting

Assistance Program of the Department of Defense recommends that states allow 40 to 45 days for round trip mailing time for overseas ballots.

11. In many counties in New Jersey, county clerks mailed absentee ballots to military and civilian overseas voters who had filed timely requests fewer than 30 days in advance of June 2, 1992.

12. The failure to mail absentee ballots to military and civilian overseas voters on a date sufficiently in advance of June 2, 1992, so as to allow the voting and return of ballots by closing time of the polls on that date may deprive United States citizens of an opportunity to vote in the June 2, 1992, federal primary election in violation of the Uniformed and Overseas Citizens Absentee Voting Act.

13. To ensure that all citizens abroad, protected under the Act and qualified to vote in New Jersey, have a reasonable opportunity to have ballots counted in the June 2, 1992, federal primary election, it is appropriate for this Court to enter an order extending by fourteen days the deadline for the receipt of ballots. Under this extension, absentee ballots from overseas citizens and military personnel received by five o'clock p.m. on June 16, 1992, will be accepted and tabulated in the final federal primary results.

14. The Attorney General of the State of New Jersey hereby agrees to accept service of process on behalf of Defendants State of New Jersey, the Secretary of State, and the 21 New Jersey County Boards of Elections.

This consent decree is final and binding as to all issues resolved herein.

B. ORDER

WHEREFORE, the parties having freely given their consent, and the terms of the decree being fair, reasonable, and consistent with the requirements of the Uniformed and Overseas Citizens Absentee Voting Act,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The defendants shall take all steps necessary to ensure that all ballots cast in the June 2, 1992, federal primary election by military personnel and other citizens located abroad under the Act, for which applications were received on or before May 4, 1992, and received by five o'clock p.m. on June 16, 1992, by the appropriate election officials, are counted for the federal offices of national party convention delegate, President, and United States Representative as validly cast ballots, so long as the ballots would have been counted if they had been received by eight o'clock p.m. on Tuesday, June 2, 1992.

2. The defendants shall notify the Director of the United States Department of Defense's Federal Voting Assistance Program (FVAP) as soon as this decree has been signed and request that the FVAP take such action as is necessary to notify overseas voters of the extension of time for receipt by New Jersey election officials of such ballots. The state shall assist the FVAP in whatever way necessary to publicize such extension of time.

3. State and county election officials shall follow the schedule with respect to the determination and certification of electoral results for the June 2, 1992 federal primary election prescribed by

the New Jersey election code, provided that appropriate amendments to such determinations and certifications shall be made to the extent that ballots required under this Order to be counted are received too late to be included in such original determinations and certifications.

4. Within 45 days after June 2, 1992, defendants shall file a report with this Court, with respect to the June 2, 1992, primary election, which sets forth the following information:

(a) the dates on which each county in the State of New Jersey began and completed the process of mailing ballots to citizens located abroad;

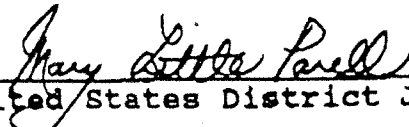
(b) the number of valid absentee ballots, by county, received and counted by eight o'clock p.m., Tuesday, June 2, 1992, from citizens located abroad;

(c) the number of absentee ballots, by county, received and counted after eight o'clock p.m., June 2, 1992, but prior to five o'clock p.m., June 16, 1992, from citizens located abroad; and

(d) the number of absentee ballots, by county, received from citizens located abroad later than five o'clock p.m., June 16, 1992, and for that reason not counted.

5. The Court retains jurisdiction of this action for the purpose of enforcing the foregoing provisions.

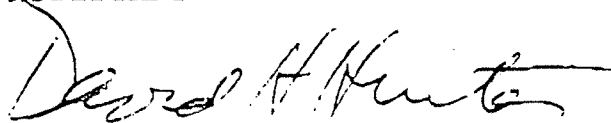
ORDERED this 22 day of June 1992.


United States District Judge

The undersigned agree to the entry of this Decree.

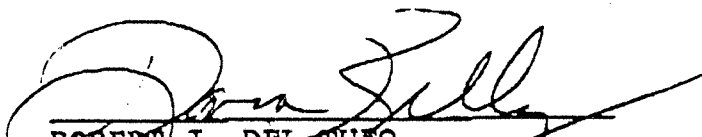
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