

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

The Honorable Curt Weldon
and
The Honorable Stephen Barrar,

Plaintiffs,

v.

NO. 04-5104

Berks County Department of Election
Services, et al:

Defendants.

ORDER

Counsel for Plaintiffs filed their complaint on November 1, 2004 seeking the following relief:

1. Preliminary Injunction/Temporary Restraining Order.
2. Enjoining the Defendants from delivering any absentee ballots received from any state, county or city correctional facility, to the local election districts as provided in 25 P.S. 3146.. All Absentee ballots received from any state, county or city correctional facility shall be set aside by the County Board of Elections until such time as a hearing may be held by said County Board of Elections to determine whether any of the set aside absentee ballots were delivered to the County Board of Elections by a third party in violation of 25 P.S. 3146.6(a).
3. Enjoining Defendants from delivering any absentee ballots received form any state, County or city correctional facility to the local election districts as provided in 25 P.S. 3146.8. All absentee ballots received from any state, county or city correctional facility shall be set aside by the

County Board of Elections until such time as a hearing may be held by said County Board of Elections to determine whether any of the set aside absentee ballots were submitted by convicted incarcerated felons in violation of Pennsylvania law.

4. Enjoining Defendants from delivering any absentee ballots received from any state, county or city correctional facility, to the local election districts as provided in 25 P.S. 3146.8. All absentee ballots received from any state, county or city correctional facility shall be set aside by the County Board of Elections until such time as a hearing may be held by said County Board of Elections to determine whether any of the set aside absentee ballots were submitted by qualified voters who were improperly assisted without the proper declaration as required by 25 P.S. 3146.6a.

The Court granted counsel a conference to discuss the request for Temporary Restraining Order. It appears that there are potential jurisdictional issues and substantial questions concerning the alleged violations. The complaint does not allege that any defendant has acted or threatened to act in an unlawful manner. Moreover, Pennsylvania law provides a process and adequate remedy to Plaintiffs. **ACCORDINGLY**, the following is **ORDERED**:

1. The Temporary Restraining Order on the ex parte motion of Plaintiffs is **DENIED**.
2. A hearing is scheduled on the Motion for Preliminary Injunctive Relief for Monday, November 8, 2004 in courtroom 15-B. provided ,however, that upon counsel for Plaintiffs certifying to the Court that the Defendants have been served, The Court will consider on application of counsel for the advancement of the hearing date.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.