

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. _____
)	
THE STATE OF TENNESSEE; RILEY)	
DARNELL, SECRETARY OF STATE OF)	
THE STATE OF TENNESSEE, in his official)	
capacity; BROOK THOMPSON,)	
COORDINATOR OF ELECTIONS OF)	
THE STATE OF TENNESSEE,)	
in his official capacity,)	
)	
Defendants.)	
)	

COMPLAINT

The United States of America alleges:

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 (“UOCAVA”), 42 U.S.C. §§ 1973ff to 19766ff-6. UOCAVA provides, *inter alia*, that absent uniformed services voters and overseas voters (“UOCAVA voters”) shall be permitted “to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 42 U.S.C. § 1973ff-1. The Attorney General is granted enforcement authority under UOCAVA, 42 U.S.C. § 1973ff-4, and brings this action to ensure that UOCAVA voters

will have an opportunity to cast ballots in the February 5, 2008 presidential primary election.

2. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

3. The Defendant State of Tennessee (the “State”) is responsible for complying with UOCAVA, and ensuring UOCAVA voters have sufficient time to receive, cast and return their absentee ballots.

4. Defendant Riley Darnell is sued in his official capacity as the Secretary of State of the State of Tennessee. As the Secretary of State, he is responsible for appointing the Coordinator of Elections, the chief administrative election officer of the state, “who shall serve at the pleasure of the secretary of state.” Tenn. Code Ann. § 2-11-201(a). The principal office of the Secretary of State is in Nashville, Tennessee.

5. Defendant Brook Thompson is sued in his official capacity as the Coordinator of Elections of the State of Tennessee. As Coordinator of Elections he is the chief administrative election officer of the State of Tennessee and is responsible for assuring that elections in the State are conducted in accordance with the law. Tenn. Code Ann. §§ 2-11-201(b); 2-11-202(a)(1); 2-11-202(a)-14. The Coordinator of Elections has general supervisory authority over all elections in the State and is responsible for determining the results of primary elections and certifying the names of political party nominees. Tenn. Code Ann. §§ 2-8-115, 2-11-202. The principal office of the Coordinator of Elections is in Nashville, Tennessee.

6. On February 5, 2008, the State of Tennessee will conduct a federal primary election in which voters will participate in the selection of party nominees and party delegates for President of the United States.

7. Election officials of the State of Tennessee have received timely requests for absentee ballots from voters who are entitled to vote pursuant to the provisions of UOCAVA.

8. In order to allow UOCAVA voters a fair opportunity to vote by absentee ballot, election officials in Tennessee must mail the ballots to the voters sufficiently in advance of the election so that voters can receive the ballot, cast their vote, and return their absentee ballots by the deadline established under Tennessee law.

9. Based on data from the United States Postal Service, the Department of State, and the Military Postal Service Agency, the Federal Voting Assistance Program ("FVAP") of the Department of Defense has determined that states must provide no less than thirty days for the round-trip mail transit of a ballot to overseas locations to ensure voters have a reasonable opportunity to return the ballot in time to be counted. The FVAP recommends that states allow forty-five days for the round-trip transit of overseas ballots.

10. Under Tennessee law, absentee ballots received after the polls close are not counted. Tenn. Code Ann. § 2-6-303(b). For the February 5, 2008 presidential primary election in Tennessee, the polls close at 7:00 p.m. central standard time and 8:00 p.m. eastern standard time.

11. In many counties in Tennessee, county election officials did not mail absentee ballots to overseas citizens (who filed timely requests) on a date sufficiently in advance of the February 5, 2008 election to allow such voters to receive the ballot, cast a vote, and return the ballot to county election commissions by the time the polls close on February 5, 2008. According to information provided by the counties, forty-six counties failed to mail requested

overseas ballots by the 30th day before the election.

12. The failure of election officials in Tennessee to mail absentee ballots to eligible UOCAVA voters sufficiently before February 5, 2008, so as to allow the voting and return of ballots by the deadline established by State law, will deprive certain specially covered United States citizens of an opportunity to vote in violation of UOCAVA.

13. An order of this Court is necessary requiring Defendants to take corrective action for the February 5, 2008 presidential primary election in order to protect the rights granted by UOCAVA.

WHEREFORE, Plaintiff prays that this Court hear this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345; issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of Tennessee officials to send absentee ballots to UOCAVA voters in sufficient time to be received, cast, and returned by the State's deadline in the February 5, 2008 presidential primary election violates UOCAVA; and issue injunctive relief ordering the Defendants, their agents and successors in office, and all persons acting in concert with them:

- (1) to count as validly cast ballots in the February 5, 2008 presidential primary election all those ballots, including State Special Write-in Absentee Voters' Ballots and Federal Write-in Ballots, cast by persons outside the United States who are qualified to vote in Tennessee pursuant to UOCAVA, provided such ballots are executed by February 5, 2008, and received by the close of business on February 15, 2008, and otherwise satisfy the requirements of Tennessee law. Notwithstanding the above,

election results may be formally certified based on ballots received by the close of the polls in any contest in which the number of outstanding absentee ballots from UOCAVA voters outside the United States could not mathematically alter the outcome, subject to amendment or re-certification for any contest where such ballots returned by the extended receipt deadline change the total of votes cast for any candidate;

- (2) to accept for the February 5, 2008 presidential primary election the Federal Write-in Absentee Ballot provided for in UOCAVA, 42 U.S.C. § 1973ff-2, provided such ballots otherwise satisfy the requirements of UOCAVA and Tennessee law.
- (3) to take such steps as are necessary to afford UOCAVA voters who are eligible to participate in the February 5, 2008 presidential primary election a reasonable opportunity to learn of this Court's order;
- (4) to provide a report to the United States concerning the number of UOCAVA ballots, including State Special Write-in Absentee Voters' Ballots and Federal Write-in Ballots, by county, received and counted for the February 5, 2008 presidential primary election pursuant to this Court's order within forty-five days after the election; and
- (5) to take such steps as are necessary to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future elections for federal office.

The United States of America further prays that this Court order such other relief as the interests of justice may require, together with the costs and disbursements of this action.

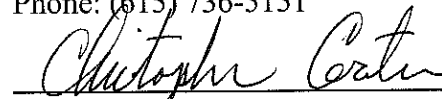
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