

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	Case No.
v.)	
)	
THE STATE OF GEORGIA; and)	<u>COMPLAINT</u>
BRIAN P. KEMP,)	
SECRETARY OF STATE)	
OF GEORGIA, in his official capacity,)	
)	
Defendants.)	
)	
)	

The United States of America alleges:

1. This action is initiated by the Attorney General on behalf of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) of 1986, 42 U.S.C. §§ 1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act (“MOVE Act”) of 2009, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-35 (2009). UOCAVA provides that absent uniformed services voters and overseas 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(a)(1).

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. §1973ff-4, and brings this action for declaratory and injunctive relief to ensure that absent uniformed services voters and overseas voters (“UOCAVA voters”) will have the opportunity to vote guaranteed by UOCAVA in Georgia’s 2012 runoff elections for Federal office and in future runoff elections for Federal office.

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

4. Defendant State of Georgia is charged with the responsibility of complying with UOCAVA and ensuring that validly requested absentee ballots are transmitted to UOCAVA voters in accordance with its terms. 42 U.S.C. § 1973ff-1.

5. Defendant Brian P. Kemp is sued in his official capacity as the Secretary of State of the State of Georgia. The Secretary of State is Georgia’s chief election official. Ga. Code Ann. § 21-2-50(b). The Secretary of State is, among other things, responsible for performing the duties imposed under Georgia’s electoral laws. Ga. Code Ann. § 21-2-50(a).

6. The principal office of the Secretary of State's Elections Division is in Atlanta, Georgia.

7. Georgia law requires that a runoff election be held 21 days following a regular or special primary election in which a candidate, including those in elections for Federal offices, failed to receive a majority of the votes cast. *See* Ga. Code Ann. § 21-2-501(a). Similarly, Georgia holds a runoff election 28 days following a regular or special general election in which a candidate, including those in elections for Federal offices, failed to receive a majority of the votes cast. *See* Ga. Code Ann. § 21-2-501(a).

8. On July 31, 2012, the State will conduct a Federal primary election for its delegation to the U.S. House of Representatives. In the event that a candidate for nomination to that Federal office fails to receive a majority of the votes cast, Georgia will hold a primary runoff election 21 days thereafter, on August 21, 2012. *See* Ga. Code Ann. § 21-2-501(a). According to the list of candidates who qualified for the primary election ballot, there are three or more candidates seeking the nomination of one of the two main political parties in 6 of Georgia's 14 Congressional districts.

9. On November 6, 2012, Georgia will conduct a Federal general election for its delegation to the U.S. House of Representatives. In the event a candidate for

that Federal office fails to receive a majority of the votes cast, Georgia will hold a runoff election 28 days thereafter, on December 4, 2012. *See* Ga. Code Ann. § 21-2-501(a).

10. Section 102(a)(8) of UOCAVA requires that states transmit all validly-requested ballots to UOCAVA voters not later than 45 days before an election for Federal office when the request is received at least 45 days before the election, unless a hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. *See* 42 U.S.C. §§ 1973ff-1(a)(8) & (g). The State of Georgia did not seek or obtain a hardship exemption for the August 21, 2012 Federal primary runoff election.

11. Counties of the State already have received timely requests for absentee ballots before the 45th day prior to the August 21, 2012 Federal primary runoff election and the December 4, 2012 Federal general runoff election from voters who are entitled to vote pursuant to the provisions of UOCAVA.

12. The deadline for transmission of absentee ballots to UOCAVA voters who have requested them at least 45 days before the August 21, 2012 Federal primary runoff election will be July 7, 2012. The deadline for transmission of absentee ballots to UOCAVA voters who have requested them at least 45 days before the December 4, 2012 Federal general runoff election will be October 20, 2012.

13. Georgia law requires that absentee ballots from UOCAVA voters must be received no later than three days after a Federal election, so long as the ballot is postmarked by the date of the election. *See* Ga. Code Ann. § 21-2-386(a)(1)(G). Thus, for the August 21, 2012 Federal primary runoff election, UOCAVA ballots must be received by August 24, 2012. For the December 4, 2012 Federal general runoff election, UOCAVA ballots must be received by December 7, 2012.

14. The Georgia Secretary of State's office has provided to the United States its written plan for Federal runoff elections, established as required by Section 102(a)(9) of UOCAVA, 42 U.S.C. §1973ff-1(a)(9). *See* Attachment A, UOCAVA Written Plan for Federal Runoff Elections ("Written Plan").

15. Georgia law requires that official absentee ballots for runoff elections be transmitted "as soon as possible prior to a runoff." *See* Ga. Code Ann. § 21-2-384(a)(2). According to the Written Plan, when they become available, official absentee ballots for the runoff election are transmitted to UOCAVA voters by the method of transmission they requested for the primary or general election, unless they requested a different method for the runoff election. *See* Written Plan at 2. For voters who requested to receive their absentee ballot electronically without specifying an alternative means of transmission, official absentee ballots are transmitted through the Secretary of State's Electronic Ballot Delivery ("EBD")

system, which is “an automated, overnight delivery process whereby each voter is notified that his/her ballot is available for download.” *See id.*

16. Although not stated in the Written Plan, information from State officials indicates that the list of candidates for a runoff election typically is certified one week following the initial election, since the deadline for counties to certify their results is 5:00 p.m. on the Monday following a Tuesday election, *see* Ga. Code Ann. § 21-2-493(k), with the State generally certifying a final list the next day. However, under Georgia law, the Secretary of State could wait as long as one additional week before certifying election results, *see* Ga. Code Ann. § 21-2-499(b), further delaying the availability of the information necessary for the State to prepare and transmit official absentee ballots for the runoff election.

17. Thus, Georgia’s UOCAVA voters will be sent official absentee ballots no earlier than 14 days before a Federal primary runoff election. For a Federal general runoff election, the information necessary to prepare a ballot potentially would be available one week earlier, but still no more than 21 days before the runoff election.

18. Prior to the transmission of the official absentee ballot for the runoff election, the State sends voters who have requested to receive their absentee ballots by mail a State Write-in Absentee Ballot (“SWAB”) for use in the event of a runoff

election along with their primary or general election absentee ballot. *See* Written Plan at 2-3; Ga. Code Ann. § 21-2-381.2); Ga. Comp. R. & Regs. § 183-1-14-.05(b). For Georgia’s Federal primary election, this mailing will occur no later than June 16, 2012, 45 days before the election. For Georgia’s Federal general election, this mailing will occur no later than September 22, 2012, 45 days before the election. However, because it is not yet available, no list of certified candidates participating in the runoff election is included in these mailings.

19. In addition, voters who requested electronic transmission of absentee ballots can download a SWAB from the Secretary of State’s website or receive a SWAB by email or fax by the 45th day before the initial election. *See* Written Plan at 2-3. As with the SWABs sent by mail, the electronic transmission does not include confirmation that a runoff election will be held or a certified list of candidates competing in the runoff election, since no such list is available at the time of the SWAB transmission.

20. According to Georgia’s Written Plan, voters using a SWAB are directed to a website on which the State posts a list of certified candidates “[a]s soon as practicable after an election for which a runoff election will be held” *See* Written Plan at 2. However, based on information from State officials, the list of certified candidates is not posted on the State’s website until at least 14 days before

a primary runoff election and 21 days before a general runoff election. Thus, for Georgia's August 21 primary runoff election, that information would not be available until August 7, 2012, at the earliest, and for the December 4 general runoff election, the information would not be available before November 13, 2012, at the earliest.

21. Defendants' inability to transmit official absentee ballots – or its SWAB with information identifying the contesting candidates – to UOCAVA voters who have requested them by July 7, 2012, the 45th day before the August 21, 2012 Federal primary runoff election, if held, constitutes a violation of Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A). Defendants' inability to transmit absentee ballots to UOCAVA voters who have requested them by October 20, 2012, the 45th day before the December 4, 2012 Federal general runoff election, if held, constitutes a violation of Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A).

22. An order of this Court is necessary requiring Defendants to take corrective action to protect the rights granted by UOCAVA and to ensure that the State's UOCAVA voters have the opportunities derived from the requirements of UOCAVA with regard to the August 21, 2012 Federal primary runoff election, if held, and the December 4, 2012 Federal general runoff election, if held.

WHEREFORE, the United States asks this Court to hear this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201, and:

(1) Issue a declaratory judgment under 28 U.S.C. § 2201 that Georgia's failure to ensure that absentee ballots are transmitted to UOCAVA voters by July 7, 2012 for the August 21, 2012 Federal primary runoff election and by October 20, 2012 for the December 4, 2012 Federal general runoff election constitutes a violation of Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A).

(2) Issue injunctive relief ordering the Defendants, their agents and successors in office, and all persons acting in concert with them:

(a) To take such steps as are necessary to ensure that UOCAVA voters are afforded the opportunities derived from the requirements of UOCAVA with regard to the August 21, 2012, Federal primary runoff election, if held, and the December 4, 2012 Federal general runoff election, if held;

(b) To take such steps as are necessary to afford UOCAVA voters who are eligible to participate in Federal runoff elections scheduled for August 21, 2012 and December 4, 2012 a reasonable opportunity to learn of this Court's order;

(c) To report to the United States and the Court concerning the transmission, receipt, and counting of UOCAVA ballots, by county, and related procedures, for the August 21, 2012 and December 4, 2012 Federal runoff elections; and

(d) To take all such other steps as are necessary to assure that the State conducts all future Federal runoff elections in full compliance with UOCAVA.

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

Respectfully submitted,

Date: June 27, 2012

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