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14 IN THE DISTRICT COURT OF GUAM
15 TERRITORY OF GUAM

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 vs.

19 GOVERNMENT OF GUAM; THE GUAM
ELECTION COMMISSION; and JOHN F.
20 BLAS, its Executive Director, in his official
capacity,

21 Defendants.
22

FILED
DISTRICT COURT OF GUAM

OCT 06 2010

JEANNE G. QUINATA
CLERK OF COURT

CIVIL CASE NO. 10-00025

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF UNDER THE
UNIFORMED AND OVERSEAS
CITIZENS ABSENTEE VOTING ACT

COPY

1 The United States of America alleges:

2 1. This action is brought by the Attorney General on behalf of the United States pursuant to
3 the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff
4 to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, Pub. L. No.
5 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009) (“MOVE Act”). UOCAVA
6 provides that absent uniformed services voters and overseas voters (“UOCAVA voters”) shall be
7 permitted “to use absentee registration procedures and to vote by absentee ballot in general,
8 special, primary, and runoff elections for Federal office.” 42 U.S.C. § 1973ff-1. Pursuant to
9 amendments made by the MOVE Act, UOCAVA requires that states transmit absentee ballots to
10 UOCAVA voters at least 45 days in advance of an election for Federal office when ballot
11 requests have been received within 45 days of that election, unless the state receives a hardship
12 exemption pursuant to UOCAVA. 42 U.S.C. §§ 1973ff-1(a)(8)(A) & (g). The definition of
13 “state” includes Guam. 42 U.S.C. § 1973ff-6. Guam neither sought nor received a hardship
14 waiver under UOCAVA for the November 2, 2010 Federal general election.

15 JURISDICTION

16 2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C.
17 § 1973ff-4, and brings this enforcement action to ensure that Guam’s UOCAVA voters will have
18 sufficient opportunity to receive absentee ballots they have requested and submit marked
19 absentee ballots in time to be counted for the November 2, 2010 Federal general election.

20 3. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and
21 2201.

22 DEFENDANTS

23 4. Defendant Government of Guam is responsible for complying with UOCAVA, and
24 ensuring that validly-requested absentee ballots are sent to UOCAVA voters in accordance with

1 its terms. 42 U.S.C. §§ 1973ff-1 & 1973ff-6.

2 5. Defendant Guam Election Commission is responsible for administering election laws in
3 Guam and promulgating rules necessary to “carry out the provisions of the” election code. 3
4 GUAM CODE ANN. § 2103(d). The Commission has “direct and immediate supervision” over
5 local election officials “designated in accordance with the laws of Guam to perform duties
6 relative to the conduct of elections.” 3 GUAM CODE ANN. § 2103(a). The Commission is
7 responsible for the certification of election returns. 3 GUAM CODE ANN. § 11123.

8 6. Defendant John F. Blas is the Executive Director of the Commission and is sued in his
9 official capacity. He was appointed by the Commission to “administer the election law of
10 Guam” and to “perform and discharge all of the powers, duties, purposes, functions and
11 jurisdiction . . . vested in the Commission in accordance with the rules of the Commission.” 3
12 GUAM CODE ANN. § 2102(a). The Executive Director is the Secretary of the Commission. 3
13 GUAM CODE ANN. § 2102(b).

14 CAUSE OF ACTION

15 7. Section 102(a)(8)(A) of UOCAVA requires that states transmit validly requested ballots
16 to UOCAVA voters not later than 45 days before an election for Federal office when the request
17 is received at least 45 days before the election. 42 U.S.C. § 1973ff-1(a)(8)(A). Section 102(f)(1)
18 of UOCAVA requires that states establish procedures for at least one method of electronic
19 transmission of blank ballots to UOCAVA voters who opt for electronic transmission. 42 U.S.C.
20 § 1973ff-1(f)(1).

21 8. Election officials of Guam have received timely requests for absentee ballots for the
22 November 2, 2010 Federal general election from voters who are entitled to vote pursuant to the
23 provisions of UOCAVA.

1 9. The 45th day before the November 2, 2010 Federal general election was September 18,
2 2010. Upon information and belief, Guam election officials did not complete transmission of all
3 ballots to UOCAVA voters sooner than October 1, 2010, 32 days before the November 2, 2010
4 Federal general election.

5 10. Under Guam law, ballots from UOCAVA voters must be received by the close of polls
6 on election day to be counted. 3 GUAM CODE ANN. §§ 10115 & 10118.

7 11. Guam election officials did not offer any UOCAVA voters the option of choosing to
8 have their blank ballots transmitted to them electronically until on or around September 24,
9 2010.

10 12. Defendants' failure to transmit absentee ballots to UOCAVA voters 45 days in advance
11 of the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A)
12 of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

13 13. Defendants' failure to timely offer an option of electronic transmission of blank ballots
14 to UOCAVA voters constitutes a violation of Section 102(f)(1) of UOCAVA. 42 U.S.C.
15 § 1973ff-1(f)(1).

16 14. An order of this Court is necessary requiring Defendants to take corrective action in order
17 to protect the rights granted by UOCAVA and to ensure that Guam's UOCAVA voters have
18 sufficient opportunity to receive, mark, and submit their ballots in time to have them counted for
19 the November 2, 2010 general election for Federal office.

20 PRAYER FOR RELIEF

21 WHEREFORE, Plaintiff asks this Court to hear this action pursuant to 42 U.S.C.
22 § 1973ff-4 and 28 U.S.C. § 1345, and:

23 (1) Issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of Guam election
24 officials to send absentee ballots to UOCAVA voters at least 45 days in advance of the

1 November 2, 2010 general election for Federal office and to timely offer an option of electronic
2 transmission of absentee ballots to UOCAVA voters violates Sections 102(a)(8)(A) and
3 102(f)(1) of UOCAVA; and

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

6 (a) To take such steps as are necessary to assure that UOCAVA voters shall have
7 sufficient opportunity to receive, mark, and submit their ballots in time to
8 have them counted in the November 2, 2010 general election for Federal
9 office;

10 (b) To take such steps as are necessary to assure that UOCAVA voters shall have
11 the opportunity to choose to have their blank absentee ballots transmitted to
12 them electronically;

13 (c) To take such steps as are necessary to afford UOCAVA voters who are
14 eligible to participate in Guam's November 2, 2010 general election for
15 Federal office a reasonable opportunity to learn of this Court's order;

16 (d) To provide a report to the United States concerning the transmission, receipt,
17 and counting of ballots for the November 2, 2010 general election for Federal
18 office pursuant to this Court's order within 45 days after the election; and

19 (e) To take such other steps as are necessary to assure that Guam conducts its
20 elections in compliance with UOCAVA in future federal elections.

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

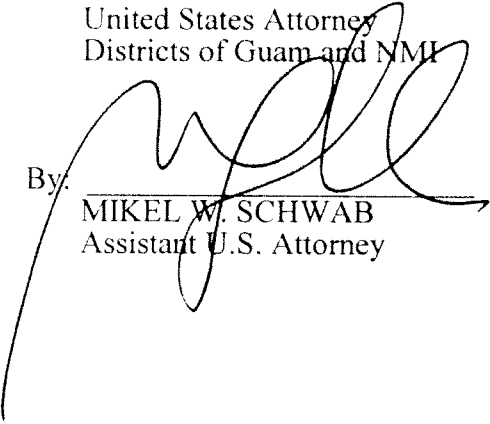
1 DATED: October 6, 2010


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