

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:12-cv-00179-MHT-WC
)	(WO)
STATE OF ALABAMA and)	
HONORABLE JIM BENNETT,)	
Secretary of State, in his official capacity,)	
)	
Defendants.)	

CONSENT ORDER

It is ORDERED that the Motion to Amend (doc. 125) is granted and that the Consent Order (doc. 124) is amended as set forth herein.

This matter concerns the State of Alabama’s obligations under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. § 1973ff *et seq.* (“UOCAVA”). This Order sets out relief related to federal runoff elections, consistent with the Court’s findings in its earlier Memorandum Opinion and Order (doc. 120).

The Court finds and orders as follows:

- 1) This Court earlier held that UOCAVA requires that Alabama must transmit absentee ballots to UOCAVA voters (who timely filed a valid request for such ballots) 45 days before federal runoff elections (doc. 120).
- 2) Under Alabama law, federal runoff elections, when needed, are held 42 days after the primary election.

3) Alabama's next primary elections for a federal office will be held on June 3, 2014.

4) Based on the number of candidates who have qualified to run in party primaries, there is the potential for a runoff election for only one federal race in 2014—the Republican primary for the 6th Congressional District, for which seven candidates have reportedly qualified. (There will be no other federal primary races in the 6th Congressional District.)

5) Alabama has indicated that if it is to transmit UOCAVA ballots 45 days before a federal runoff election, there should be 9 weeks, instead of the current 6 weeks, between the primary and the runoff election.

6) The Court invited the parties to propose remedies. The State Defendants, while reserving their appellate rights, have proposed a remedy that they contend complies with this Court's order and is the most reasonable under the circumstances and considering the interests of voters, elections officials, and candidates. The United States did not oppose the State Defendants' proposal. This order therefore reflects the State Defendants' proposal.

7) The Court below will order that, notwithstanding any other provision of Alabama law, beginning in the 2016 election cycle, Alabama shall hold any federal runoff elections 9 weeks/ 63 days after the primary election.

8) To impose that date change in 2014, however, would (as the State Defendants contend) cause certain hardships to non-UOCAVA voters. Runoffs for State and local officials would remain governed by Alabama law, and thus there is the potential that voters in the 6th Congressional District would face one runoff election 42 days after a primary, and a second runoff 63 days after the primary. Such a circumstance could (as the State Defendants contend)

cause voter confusion, negatively impact voter turnout, and burden election officials and candidates.

9) Thus, in this 2014 election cycle, the Court will authorize the use of election tools that will permit UOCAVA compliance with respect to a potential federal runoff election without moving the date of that election. Namely, the Court will authorize the use of an instant runoff system such as was used by Alabama in a 2013 special election in the 1st Congressional District.

IT IS HEREBY ORDERED AS FOLLOWS:

For purposes of the 6th Congressional District Republican primary and (potential) primary runoff in 2014 only:

1) The Secretary of State will assume responsibility for transmitting, receiving, and counting separate federal ballots transmitted electronically or by mail to applicable UOCAVA voters in the Republican primary and / or runoff election in the 6th Congressional District¹, and, for that election only, will assume the various duties outlined below that, under state law, are normally performed by county election officials.

2) The Secretary of State will transmit to 6th Congressional District Republican UOCAVA voters instant runoff ballots for the primary election in a form substantially similar to that attached as Exhibit A to this Court's order. The instant runoff ballot will allow these voters to rank the candidates in order of preference. In the primary election, each validly cast vote will be counted for the first choice candidate. In the event of a primary runoff election, each validly cast vote will be counted for whichever of the runoff candidates is ranked higher on the ballot.²

¹ As previously noted, the Republican primary for the 6th Congressional District is the only federal race with the potential for a primary runoff election, and no other federal race will occur at the primary stage for 6th Congressional District voters (that is, there will not be a primary race for Senate or a Democratic primary for the 6th Congressional District).

² The general election is not impacted by this Order.

3) In order to fully facilitate the conduct of any federal runoff election in compliance with UOCAVA and other applicable election laws, for the 2014 Republican primary and (potential) primary runoff election for the 6th Congressional District only, the Secretary of State is expressly authorized and ordered as follows:

- A. To exercise all duties relating to the transmission, receipt, and counting of ballots that are currently performed by local election officials under state law, including duties performed by Probate Judges, Absentee Election Managers, and the Board of Registrars.³ Without regard to provisions of state law, the State shall bear any and all costs and expenses incident to or incurred pursuant to this election which arise out of this court order and/or the UOCAVA voting requirements for Republican UOCAVA voters residing in the 6th Congressional District.
- B. To contract with a vendor for the preparation and ordering of the instant runoff ballots (both printed and electronic ballots) and election supplies.
- C. To prepare and approve the instant runoff ballots in the form substantially similar to the ballot attached as Exhibit A and to create a ballot record in *Power Profile*.
- D. To determine ballot style for instant runoff ballots to be issued to each Republican UOCAVA voter residing in the 6th Congressional District, such ballots being authorized to differ in style from the ballots issued to non-UOCAVA voters.

³ The duties of local election officials with respect to State and local races in the 6th Congressional District are not impacted by this Order.

- E. To order and receive instant runoff ballots (both printed and electronic ballots) and supplies directly from the printer.
- F. To assume and exercise the duties of the county absentee election manager to receive UOCAVA absentee ballot applications directly from Republican UOCAVA voters residing in the 6th Congressional District and transmit both mailed and electronic ballots.
- G. To exercise the duties of the county absentee election manager to process absentee ballot applications from Republican UOCAVA voters residing in the 6th Congressional District and to transmit both mailed and electronic ballots to those voters.
- H. To perform the Board of Registrars' voter registration duties for those Republican UOCAVA voters residing in the 6th Congressional District who request an absentee ballot by filling out the Federal Postcard Application form pursuant to UOCAVA and the *Code of Alabama* § 17-11-3(b), and otherwise perform registration duties for Alabama citizens residing in the 6th Congressional District who fall under UOCAVA and who are not already registered to vote.
- I. To publicly post the list of Republican UOCAVA voters residing in the 6th Congressional District who have requested absentee ballots in accordance with *Code of Alabama* § 17-11-5(c)—such posting to appear on the Secretary of State's website.
- J. To transmit instant runoff ballots either by mail or electronically in accordance with the means of transmission requested by the voter.

- K. To communicate with Republican UOCAVA voters residing in the 6th Congressional District regarding the ballots and procedure for voting in this election utilizing press releases, public service announcements to the extent practicable, and email or telefacsimile notifications to those Republican voters residing in the 6th Congressional District who have provided or will provide email or telefacsimile contact information. The Secretary of State shall also seek the assistance of the FVAP in notifying Republican UOCAVA voters residing in the 6th Congressional District of the changes to election procedure authorized by this order for 2014, and coordinate with the FVAP as necessary to facilitate such notice. The Secretary may adopt additional means of communicating with UOCAVA voters (including all the State's UOCAVA voters), as appropriate.
- L. To deliver to the Board of Registrars on the day following the primary election a copy of the list of all UOCAVA voters who participated in the 6th Congressional District Republican primary *via* absentee ballot.
- M. To deliver to the Board of Registrars on the day following the primary runoff election a copy of the list of all UOCAVA voters who participated in the 6th Congressional District Republican primary runoff election *via* absentee ballot.
- N. To utilize a voting tabulation machine for counting the instant runoff ballots received from Republican UOCAVA voters residing in the 6th Congressional District.

- O. To create procedures, and to provide a copy of those procedures to counsel for the United States, designed to ensure that instant runoff ballots cast by Republican UOCAVA voters residing in the 6th Congressional District are properly counted and to ensure there is no duplication in counting the voters' ballots.
- P. To receive voted ballots from Republican UOCAVA absentee voters residing in the 6th Congressional District and to secure such voted ballots until the time provided by law to count absentee ballots.
- Q. To implement as necessary provisional balloting with regard to the instant runoff ballots as provided in *Code of Alabama*, § 17-10-2, to include (1) a determination of which instant runoff ballots shall be converted to provisional ballots, (2) determination of which provisional ballots shall be counted, upon review of all provisional ballot documentation and other relevant information, and (3) the counting of those provisional ballots which have been approved for counting.
- R. To appoint absentee poll workers to count the instant runoff ballots and certify the results of said count at the times for counting and certification prescribed by Alabama law. The certified results shall be provided to the Chair of the Alabama Republican Party immediately upon certification, either by hand delivery or by electronic transmission, for inclusion in the party's canvass of its primary and (potential) primary runoff elections.

4) Poll watchers shall be permitted to observe and monitor and otherwise act in accordance with their usual duties in connection with the vote counting by the Secretary of State.

5) The Secretary of State is ordered to perform any and all other duties and functions as may be necessary to effectuate the UOCAVA voting in any runoff election in the 6th Congressional District Republican race and to effectuate this court's order.

6) In the event a UOCAVA voter makes a valid and timely request for an absentee ballot to participate in the Democratic primary, and also makes a valid and timely request for an absentee ballot to participate in the Republican primary *runoff* (such cross-over voting being allowed by the rules of the Republican party), that voter shall be sent both ballots. The ballot to participate in the Democratic primary shall be sent no later than 45 days before the primary election, and the ballot to participate in the Republican primary runoff shall be sent separately, at a later date, but no later than 45 days before the Republican primary runoff election.

IT IS FURTHER ORDERED that beginning in the 2016 election cycle,

Notwithstanding any provision of Alabama law, should a runoff election be necessary for any federal office, said runoff election shall occur on the 63rd day following the State's primary elections.

IT IS FURTHER ORDERED that defendants shall provide notice to UOCAVA voters residing in the 6th Congressional District as follows:

- A. Notify the Director of the Federal Voting Assistance Program (FVAP) of the United States Department of Defense of the entry of this Order, and request assistance in notifying impacted voters of the relief afforded in this Order. Coordinate with the FVAP as necessary to facilitate such notice.

- B. Issue a press statement concerning the relief afforded in this Order. The press statement is to be posted on the Secretary's website, and distributed to national and local wire services, to radio and television broadcast stations, and to daily newspapers of general circulation in the 6th Congressional District. The press statement shall also be distributed to the FVAP, the International Herald Tribune (<http://www.iht.com>), USA Today International (<http://www.usatoday.com>), the Military Times Media Group (cvinch@militarytimes.com), Stars and Stripes (www.estripes.com), and the Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>).
- C. For applicable UOCAVA voters residing in the 6th Congressional District who provide an email address, the Secretary shall notify the voter of the relief afforded in this order by email communication.

IT IS FURTHER ORDERED that the defendants shall provide a copy of this Court's Order to the Probate Judges, Absentee Election Managers, the Boards of Registrars, and the Chair of the Republican Party County Executive Committee in each of the Alabama Counties that comprise the 6th Congressional District. Defendants shall also provide a copy of this Court's Order to the Chair of the Republican Party State Executive Committee.

IT IS FURTHER ORDERED that the State Defendants shall, by no later than April 2, 2014, develop a “written plan” pursuant to 42 U.S.C. § 1973ff-1(a)(9).

Done this 14th day of March, 2014.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE