

**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 BETH CHAPMAN,)	
Secretary of State, in her official capacity,)	
)	
Defendants.)	

ORDER

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”). Pursuant to amendments made by the MOVE Act, Section 102(a)(8)(A) of UOCAVA requires that states transmit 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. 42 U.S.C. § 1973ff-1(a)(8)(A). Some issues in this case, though under discussion, remain in dispute. However, as set forth more fully within, the defendants have requested that this Court enter a decree to ensure Alabama’s compliance with UOCAVA in an upcoming special Congressional election. Absent such relief, UOCAVA violations will occur in connection with that election if it is conducted on the proposed schedule. The United States does not oppose this request to the extent it pertains to the upcoming special election only. The Defendants have shown, and the United States does not dispute, that:

- 1) Congressman Jo Bonner, who represents Alabama’s 1st Congressional District, has publicly announced his resignation effective August 2, 2013.

2) Pursuant to U.S. Const. Art. I § 2, the vacancy will be filled by a special election called by Governor Robert Bentley.

3) The State of Alabama, particularly the voters of the 1st Congressional District, has a strong interest in seating a new Congressman before Congress returns in early January, 2014.

4) The parties share a commitment that UOCAVA voters be allowed a full opportunity to participate in the special election.

5) To allow transmittal of UOCAVA special primary ballots 45 days before the special primary election, the earliest that the special primary election may reasonably be held is on or about September 24, 2013. The 45th day before September 24, 2013 is August 10, 2013.

6) Because of the number of people who have expressed an interest in qualifying for the special primary election, there is a reasonable likelihood that a special primary runoff election will be necessary in addition to the special primary and the special general election.

7) Allowing time for necessary canvassing of ballots and certification of the results, it would not be possible to complete the special election before Congress returns in January if UOCAVA voters were sent standard ballots 45 days before the special primary runoff and special general election.

8) However, there exist tools in election law, such as the “instant runoff ballot” discussed below, that would allow UOCAVA voters to receive timely ballots for each phase of the special election.

9) With the understanding that these tools will be authorized by the Court, as proposed herein, Governor Bentley has indicated that the special elections shall be held to fill the

vacancy in Alabama’s 1st Congressional District following the resignation of U.S. Congressman Jo Bonner on the following dates:

Special Primary Election: September 24, 2013

Special Primary Runoff: November 5, 2013

Special General Election: December 17, 2013

The chart below delineates the various election activities required:

Activity	Date
Proclamation announcing election	Friday, August 02, 2013
Qualifying opens with political parties for the special primary election	Friday, August 02, 2013
Qualifying closes for the special primary election	Monday, August 05, 2013
Political parties certify special primary election candidates to the Secretary of State by noon	Tuesday, August 06, 2013
Secretary of State submits candidate list to ES&S for UOCAVA Instant Runoff Ballots for the special primary election by 5:00 p.m.	Tuesday, August 06, 2013
Secretary of State certifies special primary election candidates to counties	Tuesday, August 06, 2013
ES&S delivers UOCAVA Instant Special Primary Ballots to Secretary of State for special primary election	Thursday, August 08, 2013
Secretary of State mails or electronically transmits, in accordance with the voter’s preference UOCAVA Instant Special Primary Ballots to UOCAVA voters who have submitted applications by August 9, 2013	Saturday, August 10, 2013(45 days before the September 24, 2013 special primary election)
SPECIAL PRIMARY ELECTION	Tuesday, September 24, 2013
Counting of provisional ballots for special primary election commencing at noon	Tuesday, October 01, 2013
County executive committee meets immediately after counting of provisional ballots to receive, canvass, and tabulate returns by precinct and publicly declare results for the special primary election	Tuesday, October 01, 2013
County executive committee transmits special primary election results electronically to the state political parties immediately upon conclusion of county-level canvass	Tuesday, October 01, 2013
Secretary of State transmits electronically to the state political parties the count of the UOCAVA Instant Special Primary Ballots	Tuesday, October 01, 2013

Activity	Date
Chairman of state executive committee must meet not later than noon this day to certify to Secretary of State names of candidates to be placed on special primary runoff ballot	Wednesday, October 02, 2013
Secretary of State submits candidate list to ES&S for UOCAVA special primary election ballots by 5:00 p.m.	Wednesday, October 02, 2013
Secretary of State certifies special primary runoff election candidates to counties	Wednesday, October 02, 2013
ES&S delivers UOCAVA ballots to Secretary of State for special primary runoff election	Friday, October 04, 2013
Secretary of State mails or electronically transmits, in accordance with the voter's preference, standard primary runoff ballots to UOCAVA voters who have submitted applications by October 8, 2013. Standard primary runoff ballots shall be transmitted to UOCAVA voters outside of the United States who requested mail transmission of their ballot by express mail.	Tuesday, October 08, 2013
Secretary of State submits candidate list to ES&S for special general election ballot for UOCAVA voters	Friday, October 25, 2013
ES&S delivers special general election ballots for UOCAVA voters	Tuesday, October 29, 2013
Secretary of State mails or electronically transmits, in accordance with the voter's preference Special General Election Ballots to UOCAVA voters who have submitted applications by November 2, 2013	Saturday, November 02, 2013 (45 days before the December 17, 2013 special general election)
SPECIAL PRIMARY RUNOFF	Tuesday, November 05, 2013
Counting of provisional ballots for special primary runoff election commencing at noon	Tuesday, November 12, 2013
County executive committee meets immediately after counting of provisional ballots to receive, canvass, and tabulate returns by precinct and publicly declare results for the special primary runoff election	Tuesday, November 12, 2013
County executive committee transmits special primary runoff election results electronically to the state political parties immediately upon conclusion of county-level canvass	Tuesday, November 12, 2013
Secretary of State transmits electronically to the state political parties the count of the UOCAVA special primary runoff ballots	Tuesday, November 12, 2013
Chairman of state executive committee must meet not later than noon this day to certify to Secretary of State names of candidates to be placed on special general election ballot	Wednesday, November 13, 2013
Secretary of State submits candidate list to ES&S for UOCAVA special general election ballots by 5:00 p.m.	Wednesday, November 13, 2013

Activity	Date
Secretary of State certifies special general election candidates to counties	Wednesday, November 13, 2013
ES&S delivers UOCAVA ballots to Secretary of State for special general election	Friday, November 15, 2013
Secretary of State mails or electronically transmits, in accordance with the voter's preference, standard general election ballots to UOCAVA voters who have submitted applications by November 19, 2013. Standard general election ballots shall be transmitted to UOCAVA voters outside of the United States who requested mail transmission of their ballot by express mail.	Tuesday, November 19, 2013
SPECIAL GENERAL ELECTION	Tuesday, December 17, 2013
Counting of provisional ballots for special general election commencing at noon	Monday, December 23, 2013
County canvassing board meets immediately after counting of provisional ballots to receive, canvass, and tabulate returns by precinct and public declare results for the special general election	Monday, December 23, 2013
County canvassing board transmits special general election results to the Secretary of State immediately upon conclusion of county-level canvass	Monday, December 23, 2013
Last day to receive UOCAVA ballots for the special general election; ballots must be received by noon	Friday, December 27, 2013
Commencing at noon, state canvassing board meets to receive, canvass and tabulate returns and publicly declare the results for the special general election	Friday, December 27, 2013

10) Absent an order of this Court, UOCAVA violations will occur in connection with the upcoming special federal election to fill the expected Congressional vacancy occasioned by Congressman Bonner's announced resignation, if the election is conducted on the proposed schedule.

11) In light of the compressed schedule, the use of election procedures that have not before been used in Alabama, difficulties with UOCAVA compliance in prior elections, and the fact that relief from this Court is necessary to avoid certain UOCAVA violations in connection with the upcoming special federal election if it is conducted on the proposed schedule, it is in the best interest of UOCAVA voters that the Alabama Secretary of State perform certain election

duties, in the special Congressional election only, that are normally performed by local election officials.

IT IS HEREBY ORDERED that the defendants' motion for entry of an order concerning a special election (doc. no. 69) is granted as follows:

For purposes of the upcoming special Congressional election only,

1) The Secretary of State will assume responsibility for transmitting, receiving, and counting ballots transmitted electronically or by mail for all UOCAVA voters and, for the 2013 special Congressional election only, will assume the various duties outlined below that, under state law, are performed by county election officials.

2) The Secretary of State will transmit to UOCAVA voters instant run-off ballots for the special primary election ("Instant Primary Ballot") in a form substantially similar to that attached as Exhibit A to this Court's order. The Instant Primary Ballot will allow UOCAVA voters to rank all candidates from one political party in the special primary election in order of preference. In the special primary election, each validly cast vote will be counted for the first choice candidate. In the event of a special primary run-off election between candidates, each validly cast vote will be counted for whichever of the run-off candidates is ranked higher on the ballot.

3) The Instant Primary Ballot will be supplemented by the standard primary runoff ballot, which is the ballot provided all non-UOCAVA voters in the 1st Congressional District ("Standard Primary Runoff Ballot"). This ballot will be mailed or electronically transmitted, in accordance with the voter's preference, to all UOCAVA voters from Alabama's 1st Congressional District (with pending valid requests for such ballots) after certification of the special primary election results. UOCAVA voters outside of the United States who have requested to receive their ballots by mail will have their Standard Primary Runoff Ballot sent by

express mail and will be provided with a pre-paid express mail envelope to return this ballot. UOCAVA voters who did not vote in the special primary election will be able to use this ballot to exercise their right to vote in the special primary runoff. UOCAVA voters who did submit the Instant Primary Ballot may change their votes by voting on the Standard Primary Runoff Ballot, which will supersede the Instant Primary Ballot upon timely receipt. UOCAVA voters who submitted an Instant Primary Ballot and do not wish to change their choice need not submit a Standard Primary Runoff Ballot; their votes will be tabulated according to the preferences ranked on the Instant Primary Ballot.

4) UOCAVA voters will also be transmitted a special election ballot for the special general election (“Special General Ballot”), which will be mailed a minimum of 45 days in advance of the special election date, in a form substantially similar to that attached as Exhibit B to this Court’s order. The Special General Ballot will contain the names of the candidates certified for the special primary runoff election and the names of any qualified independent or third party candidates. The purpose of the Special General Ballot is to provide UOCAVA voters with a ballot that can be transmitted at least 45 days in advance of the special general election, even though candidates must still be finalized following the certification of the results of the special primary runoff. Along with the Special General Ballot, the Secretary of State shall provide detailed instructions for UOCAVA voters from the 1st Congressional district to determine the certified results of the special primary runoff election and to cast a vote for their candidate of choice using the Special General Ballot. The Secretary of State shall further instruct such voters of their option to cast a vote for the eventual nominee of their political party of choice. The Special General Ballot will be mailed or transmitted electronically in accordance

with the voter's preference as early as possible following certification of the special primary election results, but not later than November 2, 2013.

5) The Special General Ballot will be supplemented by the standard general election ballot used by all non-UOCAVA voters in the 1st Congressional District ("Standard General Ballot"), which will be mailed or electronically transmitted, in accordance with the voter's preference, to all UOCAVA voters upon certification of the special primary runoff election results. UOCAVA voters outside of the United States receiving their ballots by mail will have their Standard General Ballot sent by express mail and will be provided with a pre-paid express mail envelope to return this ballot.

6) Further, the Secretary of State will communicate with UOCAVA voters utilizing press releases, public service announcements to the extent practicable, and email or telefacsimile notifications to those voters who have provided or will provide email or telefacsimile contact information. In addition, Defendants shall notify the Director of the Federal Voting Assistance Program of the United States Department of Defense ("FVAP") no later than one business day from the date of entry of this Order to request assistance in notifying military and overseas eligible voters of the relief afforded in this Order, and coordinate with the FVAP as necessary to facilitate such notice. This information will ensure that, to the fullest extent possible, UOCAVA voters receive sufficient notification of the special election and of the corresponding absentee ballots. The Secretary may adopt additional means of communicating with UOCAVA voters, as appropriate.

7) In order to fully facilitate the conduct of this special election in compliance with UOCAVA and other applicable election laws, for this special election 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 UOCAVA 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. The State shall bear any and all costs and expenses incident to or incurred pursuant to this special election which arise out of this court order and/or the UOCAVA voting requirements without regard to provisions of state law.
- B. To contract with a vendor for the preparation and ordering of the UOCAVA ballots (both printed and electronic ballots) and election supplies. This specifically includes the ballots unique to UOCAVA voters for this special election.
- C. To prepare and approve the ballots in the forms substantially similar to the ballots attached as Exhibits A and B and all other official UOCAVA ballots required in the special election and to create a ballot record in *Power Profile*.
- D. To determine ballot style for ballots to be issued to each UOCAVA voter, such ballots being authorized to differ in style from the ballots issued to non-UOCAVA voters.
- E. To order and receive UOCAVA 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 UOCAVA voters and transmit both mailed and electronic ballots.

- G. To exercise the duties of the county absentee election manager to process UOCAVA absentee ballot applications and transmit both mailed and electronic ballots.
- H. To perform the Board of Registrars' voter registration duties for those UOCAVA voters who request an absentee ballot by filling out the Federal Postcard Application form pursuant to Federal law and the *Code of Alabama* § 17-11-3(b), and otherwise perform registration duties for any Alabama citizen falling under UOCAVA who is not already registered to vote.
- I. To publicly post the list of UOCAVA voters 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 ballots either by mail or electronically in accordance with the means of transmission requested by the UOCAVA voter. The Secretary of State is further authorized to transmit and receive mailed ballots by express mail.
- K. To communicate with UOCAVA voters regarding the ballots and procedure for voting in this special election utilizing press releases, public service announcements to the extent practicable, and email or telefacsimile notifications to those voters who have provided or will provide email or telefacsimile contact information. As noted above, the Secretary of State shall also seek the assistance of the FVAP in notifying military and overseas eligible voters of the relief afforded in this Order, and coordinate

with the FVAP as necessary to facilitate such notice. The Secretary may adopt additional means of communicating with UOCAVA voters, as appropriate.

- L. To deliver to the Board of Registrars on the day following the special election a copy of the list of all UOCAVA absentee voters.
- M. To utilize a voting tabulation machine for counting the ballots received from UOCAVA voters.
- N. To create procedures, and to provide a copy of those procedures to counsel for the United States, designed to ensure that ballots cast by UOCAVA voters are properly counted and to ensure there is no duplication in counting the UOCAVA voters' ballots in connection with either receipt of both an Instant Primary Ballot and a Standard Primary Runoff Ballot, or in connection with receipt of both a Special General Ballot and a Standard General Ballot.
- O. To receive voted ballots from UOCAVA absentee voters and to secure such voted ballots until the time provided by law to count absentee ballots.
- P. To implement as necessary provisional balloting with regard to the UOCAVA absentee ballots as provided in *Code of Alabama*, § 17-10-2, to include (1) a determination of which UOCAVA absentee 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.

Q. To appoint absentee poll workers to count the UOCAVA absentee ballots on election day and certify the results of said count on 1) the seventh day after the special primary and special primary runoff, and 2) on the tenth day after the special general election (or sooner, if the number of outstanding UOCAVA ballots for the special general election could not mathematically alter the outcome of the election, subject to amendment or re-certification to add any valid UOCAVA ballots returned by the extended receipt deadline).

1. For the special primary and special primary runoff elections, the certified results shall be provided to the chairs of the state political parties immediately upon certification, either by hand delivery or by electronic transmission, for inclusion in each political party's canvass of its special primary and special primary runoff election.
2. For the special general election, the certified results shall be provided to the Secretary of State immediately upon certification for inclusion in the State canvassing board's canvass of the special general election results.

8) The Secretary of State is authorized and directed to count as validly-cast ballots in the special general election any UOCAVA ballots which are executed and post-marked or show a dated endorsement of receipt by another agency of the United States, or other reliable indicia of posting, by the date of the respective election and received no later than noon on the 10th day following the election, so long as the ballot is otherwise valid. Election results for the special general election may be certified sooner than December 27, 2013 if the number of outstanding

UOCAVA ballots could not mathematically alter the outcome of the election, subject to amendment or re-certification to add any valid UOCAVA ballots returned by the extended receipt deadline.

9) The Defendants are to report to the Court and to counsel for the United States, as soon as practical, if local election officials or any other responsible party in the 1st Congressional District fail to do any of the following:

- A. Provide the Secretary of State a list of all UOCAVA voters who have current absentee ballot applications on file so that the Secretary may process the ballot requests.
- B. Advise the Secretary of State within one (1) business day of any additional UOCAVA registrations, including the name, requested method of transmission, and requested address of delivery, all so that the Secretary may timely process the ballot requests.
- C. Transmit to the Secretary of State within one (1) business day any UOCAVA ballots received, including any UOCAVA ballots cast in-person by UOCAVA voters, so that the Secretary may timely count the ballot.
- D. Certify each county's election results on the seventh day following the special primary election and the special primary run-off election, and immediately on the same date transmit such results to the chair of each state political party *via* facsimile, electronic transmission, or hand delivery, so that the state parties can certify to the Secretary of State their

respective election results and the names to be printed on subsequent ballots and so those ballots may be timely prepared and printed.

- E. Certify each county's election results on the sixth day following the special general election, and immediately on the same date transmit such results to the Secretary of State *via* facsimile, electronic transmission, or hand delivery, so that the state canvassing board can certify the results of the special general election.

10) Defendants shall take all legal and practicable steps to ensure that local election officials and all other responsible persons and entities perform all acts necessary to meet all deadlines set out in this Order.

11) 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.

12) 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 this special election and to effectuate this court's order.

IT IS FURTHER ORDERED that defendants shall provide counsel for the United States the following information in a format to be jointly negotiated by the parties:

- A. No later than August 13, 2013, the defendants shall report on the number of UOCAVA ballots requested, the date of transmission, and the method of transmission for all Instant Primary Ballots.
- B. No later than October 11, 2013, the defendants shall report on the number of UOCAVA ballots requested, the date of transmission, and the method

of transmission for all Standard Primary Runoff Ballots sent to UOCAVA voters.

- C. No later than November 4, 2013, the defendants shall report on the number of UOCAVA ballots requested, the date of transmission, and the method of transmission for all Special General Ballots.
- D. No later than November 21, 2013, the defendants shall report on the number of UOCAVA ballots requested, the date of transmission, and the method of transmission for all Standard General Ballots sent to UOCAVA voters. Defendants shall further report by this date the number of UOCAVA ballots returned and counted for the November 5, 2013 Primary Runoff Election, as well as the total number of UOCAVA ballots returned but not counted, including the date of receipt for each and the reason why not counted.
- E. No later than January 6, 2014, the defendants shall report the number of UOCAVA ballots returned and counted for the December 17, 2013 General Election, as well as the total number of UOCAVA ballots returned but not counted, including the date of receipt for each and the reason why not counted.

IT IS FURTHER ORDERED that defendants shall provide notice to UOCAVA voters 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 UOCAVA 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 1st 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 UOCAVA voters who provide an email address, email communications.

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 Chairs of both County Party Executive Committees in each of the six Alabama Counties that comprise the 1st Congressional District: Baldwin, Escambia, Mobile, Monroe, Washington and Clarke County (partially within the Congressional District). Defendants shall also provide a copy of this Court's Order to the Chairs of the State Party Executive Committees.

Done this 26th day of July, 2013.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE