

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	
STATE OF MICHIGAN;	)	
RUTH JOHNSON, SECRETARY OF STATE	)	
OF THE STATE OF MICHIGAN,	)	
in her official capacity; and	)	
CHRISTOPHER M. THOMAS, DIRECTOR	)	
OF ELECTIONS OF THE STATE OF	)	
MICHIGAN, in his official capacity,	)	
	)	
Defendants.	)	
_____	)	

**COMPLAINT**

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 requires that absent uniformed services voters and overseas voters 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 Michigan's 2012 elections for Federal office and in future 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 Michigan 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 Ruth Johnson is sued in her official capacity as the Secretary of State of the State of Michigan. The Secretary of State is Michigan's chief elections officer. Mich. Comp. Laws Ann. § 168.21. The Secretary of State is, among other things, charged with issuing instructions and promulgating rules for the conduct of elections and directing local election officials regarding the proper methods of conducting elections. See Mich. Comp. Laws Ann. § 168.31 (describing duties of Secretary State).

6. Defendant Christopher M. Thomas is sued in his official capacity as the Director of Elections of the State of Michigan. In Michigan, the Director of Elections is vested with the powers and must perform the duties of the Secretary of State concerning the supervision and administration of the election laws. Mich. Comp. Laws Ann. § 168.32.

7. The Department of Justice has sued the State of Michigan and the Michigan Secretary of State four times previously, after enactment of UOCAVA but prior to enactment of the MOVE Act, for violations of UOCAVA arising from the late mailing of ballots to UOCAVA voters. The Department brought suit against Michigan on July 28, 1988, which was settled by consent decree entered on July 29, 1988. Consent Decree, *United States v. Michigan*, No. L88-208-CA5 (W.D. Mich. 1988). The Department brought suit against Michigan on August 3, 1992, which was

settled by consent decree entered that same day. Consent Decree, *United States v. Michigan*, No. 1:92-CV-529 (W.D. Mich. 1992). The Department brought suit against Michigan on December 3, 1993, which was settled by consent decree entered on December 6, 1993. Consent Decree, *United States v. Michigan*, No. 1:93-CV-968 (W.D. Mich. 1993). The Department brought suit against Michigan on August 8, 2000, which was settled by consent decree entered that same day. Consent Decree, *United States v. Michigan*, No. 1:00-CV-583 (W.D. Mich. 2000).

8. The principal office of the Secretary of State's Bureau of Elections is in Lansing, Michigan.

9. 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). The State of Michigan did not receive a hardship exemption under UOCAVA for any Federal election in 2012.

### **CLAIM ONE**

10. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-9 of this Complaint.

11. On August 7, 2012, the State will conduct a Federal primary election.

12. The deadline for transmission of absentee ballots to UOCAVA voters who had requested them at least 45 days before the August 7, 2012 Federal primary election was Saturday, June 23, 2012.

13. Cities and townships of the State received timely requests for absentee ballots on or before the 45th day prior to the August 7, 2012 Federal primary election from voters who are entitled to vote pursuant to the provisions of UOCAVA.

14. All absent voter ballots, including those from UOCAVA voters, must be received by local elections officials by 8 p.m. on election day in order to be counted. Mich. Comp. Laws Ann. §§ 168.720 and 168.759a.

15. On July 19, 2012, the State provided the United States with a preliminary report of compliance with the 45-day transmittal deadline of June 23, 2012 for the August 7, 2012 Federal primary election.

16. The preliminary report was based on the responses to a state-wide survey sent to all local elections officials to assess the UOCAVA compliance of the State's 1,517 cities and townships.

17. Of the 1,072 jurisdictions that replied to the survey, 62 cities and townships reported that they failed to send all of their UOCAVA ballots by the June 23, 2012 deadline.

18. According to the report, as of July 19, 2012, of the 62 jurisdictions that sent UOCAVA ballots after the 45-day deadline, 26 sent a total of 52 ballots by Monday, June 25 (two days after the deadline), and 26 jurisdictions sent a total of 77 ballots by Friday, June 29 (six days after the deadline). Three jurisdictions sent a total of four ballots by July 3 (ten days after the deadline), and one jurisdiction sent one ballot on July 16 (23 days late). The State did not provide information for when six jurisdictions sent at least nine ballots, other than noting the ballots were sent late.

19. Michigan has failed to provide any information on whether 443 jurisdictions have transmitted ballots to UOCAVA voters in compliance with the 45-day deadline.

20. Defendants' failure to transmit absentee ballots to UOCAVA voters who requested them by June 23, 2012, the 45th day prior to the August 7, 2012 Federal primary election, constitutes a violation of Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

21. 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 sufficient opportunity to vote in the August 7, 2012 Federal primary election.

**CLAIM TWO**

22. Plaintiff hereby realleges and incorporates by reference ¶¶ 1-9 of this Complaint.

23. On July 10, 2012, the Lieutenant Governor called a special primary election to be held on September 5, 2012 in the 11th Congressional District to fill the vacancy created by the resignation of United States Representative Thad McCotter. The special general election will be held on November 6, 2012.

24. The deadline for transmission of absentee ballots to UOCAVA voters who had requested them at least 45 days before the September 5, 2012 Federal special primary election was Sunday, July 22, 2012.

25. Cities and townships of the State received timely requests for absentee ballots on or before the 45th day prior to the September 5, 2012 Federal special primary election from voters who are entitled to vote pursuant to the provisions of UOCAVA.

26. All absent voter ballots, including those from UOCAVA voters, must be received by local elections officials by 8 p.m. on election day in order to be counted. Mich. Comp. Laws Ann. §§ 168.720 and 168.759a.

27. The State notified the Attorney General that with regard to the September 5, 2012 Federal special primary election, UOCAVA ballots were transmitted on July 23, 2012, 44 days prior to the election.

28. Defendants' failure to transmit absentee ballots to UOCAVA voters who requested them by July 22, 2012, the 45th day prior to the September 5, 2012 Federal special primary election, constitutes a violation of Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

29. 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 sufficient opportunity to vote in the September 5, 2012 Federal special primary election.

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 Michigan violated Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. §§ 1973ff-1(a)(8)(A), by failing to ensure that absentee ballots were transmitted to UOCAVA voters by June 23, 2012, for the August 7, 2012 Federal primary election and by July 22, 2012, for the September 5, 2012 Federal special primary election.
- (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 opportunity to vote in the August 7, 2012 Federal primary election and the September 5, 2012 Federal special primary election that adequately remedies the violations of Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. §§ 1973ff-1(a)(8)(A);
  - (b) To take such steps as are necessary to afford UOCAVA voters who are eligible to participate in the State's August 7, 2012 Federal primary election and the September 5, 2012 Federal special primary election 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 city and township, and related procedures, for the August 7, 2012 Federal primary election and the September 5, 2012 Federal special primary election pursuant to this Court's order;
- (d) To report to the United States and the Court concerning the transmission, receipt, and counting of UOCAVA ballots, by city and township, and related procedures, for the November 6, 2012 Federal general election; and
- (e) To take such other steps as are necessary to assure that the State conducts all future Federal 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.

Date: July 31, 2012

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