

FILED

MAR 22 2002

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS
Austin Division
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF TEXAS;
GWYN SHEA, SECRETARY OF STATE
OF THE STATE OF TEXAS; TEXAS
REPUBLICAN EXECUTIVE COMMITTEE;
SUSAN WEDDINGTON, Texas Republican
Executive Committee Chairman;
TEXAS DEMOCRATIC EXECUTIVE COMMITTEE;
MOLLY BETH MALCOLM, Texas Democratic
Executive Committee Chair;

Defendants.

A 02 CA 19 5SS

Civil Action No.

COMPLAINT

The United States of America alleges that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff to 1973ff-6, which provides, inter alia, that absentee 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. This action is brought to ensure that United States citizens living abroad, who are qualified to vote in the April 9, 2002 federal primary runoff election in the State of Texas, and who have filed timely applications for absentee ballots, will

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have an opportunity to vote in that election and have their ballots counted. The United States is seeking a temporary restraining order and preliminary injunction through separate motion to ensure compliance with the law at the April 9, 2002 election. This action also seeks permanent relief to ensure future compliance with the Uniformed and Overseas Citizens Absentee Voting Act.

2. This Court has jurisdiction of this action pursuant to 42 U.S.C. 1973ff-4 and 28 U.S.C. 1345.

3. The Defendant State of Texas is charged with the responsibility of assuring that Texas election laws, as applied, comply with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff to 1973ff-6.

4. Defendant Gwyn Shea is the Secretary of State of the State of Texas and is sued in her official capacity. The Secretary of State is the chief election officer of Texas, and as such, she is responsible for the administration of state laws affecting voting and for assuring that elections in the state are conducted in accordance with law.

5. Defendants Texas Republican Executive Committee and Susan Weddington, Chairman, are responsible for the conduct and administration of Texas primary elections and runoff elections for the offices of U.S. Senator and Member of the U.S. House of Representatives for Republican candidates. See Texas Election Code § 172 et seq. Defendant Weddington is sued in her official capacity.

6. Defendant Texas Democratic Executive Committee and

Molly Beth Malcolm, Chair, are responsible for the conduct and administration of Texas primary elections and runoff elections for the offices of U.S. Senator and Member of the U.S. House of Representatives for Democratic candidates. See Texas Election Code § 172 et seq. Defendant Malcolm is sued in her official capacity.

7. In the March 12, 2002 federal primary election, the voters of the State of Texas participated in the selection of candidates for the U.S. Senate and House of Representatives. A runoff election will be held on April 9, 2002 for those offices for which no candidate received a majority of votes in the primary election. There are a total of four such runoff elections - two for Republican House nominations, one for a Democratic House nomination, and the Democratic Senate nomination.

8. County election officials of the State of Texas have received timely requests for absentee ballots from overseas voters who are entitled to vote pursuant to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act.

9. Under Texas law, absentee ballots sent from overseas civilian and military voters and received by the second day after the date of the election are counted, as long as they otherwise satisfy the requirements of Texas law. Tex. Election Code § 86.007(d)(3)(B).

10. In order to allow overseas citizens a fair opportunity

to vote by absentee ballot, election officials in Texas must mail the ballots to the voters on a date sufficiently in advance of election day to allow the voter to receive the ballot, cast his or her vote, and return the ballot to the office of the election official by the deadline established by state law.

11. The United States Postal Service estimates that a period of 10 to 17 days is a reasonable benchmark from the time of posting to the time of delivery of international mail and that a period of 20 to 34 days is a reasonable benchmark for a round trip if the addressee responds on the day he or she receives the letter. The United States Department of State has estimated that 10 to 14 days is a reasonable one-way international benchmark. The Military Postal Service Agency estimates that at least 30 days are necessary for mail to military personnel to make a complete round trip to and from overseas locales. This estimate takes into account the fact that some military personnel are stationed in remote areas. The Federal Voting Assistance Program of the Department of Defense recommends that states allow 40 to 45 days for round trip mailing time for overseas ballots.

12. Because of the compressed period of time between the primary and runoff elections, election officials in a number of counties are unable to mail absentee ballots to military and civilian overseas voters on a date sufficiently in advance of the April 9, 2002 federal primary runoff election to allow such voters to receive the ballot, cast a vote, and return the ballot

to election officials by the deadline established by state law. To afford overseas voters a reasonable opportunity to vote, ballots must be mailed with sufficient time before the deadline for their receipt.

13. Election officials will mail these absentee ballots no earlier than March 20, 2002, the date the primary election will be certified, and likely several days thereafter following the printing of the runoff election ballots. This compressed schedule results in a window of no more than 22 days for round-trip transmission of ballots to and from Texas' overseas military and civilian voters.

14. The inability of county election authorities in Texas to mail absentee ballots to military and civilian overseas voters on a date sufficiently in advance of April 9, 2002 so as to allow the voting and return of ballots by the deadline established by state law, will deprive United States citizens of an opportunity to vote in the federal primary runoff election contrary to the provisions of the Uniformed and Overseas Citizens Absentee Voting Act.

15. The Federal Write-In Absentee Ballot ("FWAB") is a backup ballot available if a citizen outside the United States does not receive the regular absentee ballot from the state after having made a timely application for the ballot. States are required to accept the FWAB in general elections for Federal offices. 42 U.S.C. § 1973ff-2(a).

16. The State's acceptance of the FWAB by overseas military and civilian voters for the April 9, 2002 federal primary runoff election would reduce the international mailing time required by half, thereby permitting overseas voters to mark and transmit an absentee ballot in a timely fashion to be received by appropriate election officials by the deadline established in state law. This will afford overseas voters a reasonable opportunity to vote and have their ballots counted in the April 9, 2002 federal primary runoff election.

17. An order of this Court is necessary requiring State and Republican and Democratic party election officials of the State of Texas to take corrective action in order to protect the rights granted by the Uniformed and Overseas Citizens Absentee Voting Act.

WHEREFORE, plaintiff prays that this Court hear this action pursuant to 42 U.S.C. 1973ff-4 and 28 U.S.C. 1345, and thereafter issue a judgment enjoining the defendants, their agents and successors in office, and all persons acting in concert with them:

- (1) to take such steps as are necessary to ensure that those persons outside the United States who are qualified to vote in the State of Texas pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1, who timely applied for absentee ballots from appropriate election officials for the April 9, 2002 federal primary runoff election, are permitted to use the Federal Write-in Absentee Ballot for voting in the April 9, 2002 federal primary runoff election;
- (2) to take such steps as are necessary to require appropriate election officials to count as validly cast ballots those Federal Write-in Absentee Ballots which are completed by persons outside the United States who are qualified to vote in the State of Texas pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1 and who timely requested absentee ballots, and which ballots otherwise satisfy the requirements of Texas law and are received by

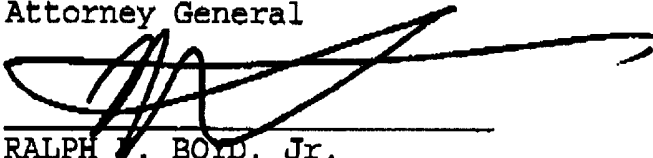
appropriate election officials not later than the second day after election day;

- (3) to take such steps as are necessary to afford military and civilian overseas voters eligible to participate in the April 9, 2002 federal primary runoff election a reasonable opportunity to learn of this Court's order;
- (4) to take such steps as are necessary to assure that uniformed services voters outside the United States and other overseas voters pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1, shall have a fair and reasonable opportunity to participate in future runoff elections for federal office;
- (5) to provide a report to the United States concerning the number of overseas ballots, including FWABs, received and counted for the April 9, 2002 federal primary runoff election.


The United States of America further prays that this Court order such other relief as the interests of justice may require.

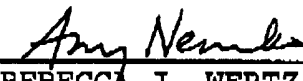
JOHN D. ASHCROFT
Attorney General

By:


RALPH W. BOYD, Jr.
Assistant Attorney General
Civil Rights Division

  AR 85206
JOHNNY SUTTON R. Barry Robinson
United States Attorney


JOSEPH D. RICH
Chief, Voting Section
Civil Rights Division


REBECCA J. WERTZ DC 464429
AMY H. NEMKO
Attorneys, Voting Section
Civil Rights Division
Department of Justice
Room 7254 - NWB
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
Phone: (202) 514-3232
Fax: (202) 307-3961