

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

COALITION FOR GOOD
GOVERNANCE, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendant.

Civil Action No. 1:20-cv-1677-TCB

**STATEMENT OF INTEREST OF THE UNITED STATES UNDER THE
UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT**

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending suit. Among other issues, this Court may consider Plaintiffs' request to postpone Georgia's primary election from its currently scheduled date of June 9, 2020, to June 30, 2020. *See* Complaint ¶ 64 (ECF No.

1); Pls.’ Mot. P. Inj. ¶ 1 (ECF No. 11).¹ Changes to the State’s election calendar implicate important questions related to the State’s ability to comply with the requirements of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (“UOCAVA”), 52 U.S.C. §§ 20301 to 20311, as amended by the Military and Overseas Voter Empowerment Act, Pub L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009) (“MOVE Act”).² The Attorney General is charged with the responsibility for enforcing UOCAVA, 52 U.S.C. § 20307, and has a strong interest in ensuring that the voting rights of military and overseas voters are protected. Accordingly, the United States respectfully requests that, if the Court decides to modify Georgia’s primary election schedule, it ensures that the schedule would allow the State to transmit absentee ballots to military and

¹ Plaintiffs also seek to extend the ballot receipt deadline for the primary election, including allowing UOCAVA ballots to be received by the second Friday after the primary election (provided that they are postmarked by Election Day). *See* Pls. Mot. P. Inj. ¶ 7 (ECF No. 11); *see also* Complaint ¶ 109 (ECF No. 1).

² The provisions of UOCAVA were originally codified at 42 U.S.C. § 1973ff *et seq.*

overseas voters who timely request them at least 45 days before any election for federal office, as UOCAVA requires.³

BACKGROUND

Georgia law requires that a runoff election be held following any regular or special primary election, including an election for federal office, in which no candidate receives a majority of the votes cast. *See* Ga. Code Ann. § 21-2-501(a)(1). Under current Georgia law, in the case of a general primary election, any runoff election “shall be held on the Tuesday of the ninth week following such general primary.” *See* Ga. Code Ann. § 21-2-501(a)(2). The State enacted legislation adopting this aspect of its electoral calendar in early 2014, following litigation brought by the United States to enforce UOCAVA’s 45-day advance ballot transmittal requirement for federal runoff elections. *See United States v. Georgia*, 778 F.3d 1202, 1204 (11th Cir. 2015) (describing Georgia’s legislative enactment of its new election calendar as well as the preceding litigation). State law permits Georgia’s Secretary of State to postpone a primary election in response to a declaration of a state of emergency or natural disaster. *See* Ga. Code

³ The United States does not address the merits of any particular UOCAVA-compliant calendar or any other claims or issues raised in this case.

Ann. § 21-2-50.1. On April 9, 2020, pursuant to the ongoing state of emergency relating to COVID-19, the Secretary of State announced that he was postponing Georgia's 2020 primary election, which includes elections for federal office, for a three-week period, from May 18 until June 9. He also announced that the primary runoff election date, including elections for federal office, likewise would be postponed for a period of three weeks, from July 21 until August 11.⁴ See https://sos.ga.gov/index.php/elections/raffensperger_announces_postponement_of_primary_election_until_june_9.

DISCUSSION

UOCAVA guarantees absent active duty members of the uniformed services (and their spouses and dependents who are absent with them) and United States citizens residing overseas the right “to vote by absentee ballot in general, special, primary, and runoff elections for federal office.” 52 U.S.C. § 20302(a)(1).

UOCAVA reflects Congress's determination that military and overseas voter participation in federal elections is a vital national interest. See *Bush v.*

Hillsborough Cnty. Canvassing Bd., 123 F. Supp. 2d 1305, 1307 (N.D. Fla. 2000)

⁴ Georgia's upcoming primary election includes several contests that feature multiple candidates competing in the same party primary, raising the possibility that a primary runoff election may be required under state law if no candidate receives a majority of the vote in a particular contest.

("[Voting is] a sacred element of the democratic process. For our citizens overseas, voting by absentee ballot may be the only practical means to exercise that right. For the members of our military, the absentee ballot is a cherished mechanism to voice their political opinion. . . . [It] should be provided no matter what their location.").

The MOVE Act reaffirmed Congress's commitment to ensuring that UOCAVA voters have sufficient time to receive, mark, and return their ballots in time to be counted. *See* MOVE Act, 156 Cong. Rec. S4513, S4518 (daily ed. May 27, 2010). To give these voters adequate time to vote, the MOVE Act amended UOCAVA to require that states transmit validly requested ballots to UOCAVA voters at least 45 days before an election for federal office when the request is received by that date. 52 U.S.C. § 20302(a)(8) ("Each state shall . . . transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter . . . not later than 45 days before the election."); 52 U.S.C. § 20302(g)(1)(A) ("the purpose [of the 45-day requirement] is to allow absent uniformed services voters and overseas voters enough time to vote"); *see also* 156 Cong. Rec. at S4518 (discussing development of 45-day deadline based upon evidence before Congress).

UOCAVA's 45-day advance ballot transmission requirement applies to runoff elections for federal office. *See* 52 U.S.C. § 20302(a)(8) (establishing the 45-day requirement in “an election for Federal office”); *United States v. Alabama*, 778 F.3d 926, 928 (11th Cir. 2015) (holding that “each state must comply with the forty-five day transmission requirement for any federal election, including a runoff election”); *United States v. Georgia*, 952 F. Supp. 2d 1318, 1326 (N.D. Ga. 2013) (“find[ing] that § [20302(a)(8)(A)]’s forty-five day advanced mailing requirement for absentee ballots applies to federal runoff elections”), *judgment vacated as moot*, 778 F.3d 1202 (11th Cir. 2015) (holding that the case was moot in light of the legislature changing the election calendar).

The primary election calendar recently adopted by the Secretary of State establishes a period of nine weeks between the State’s 2020 primary election, now rescheduled for June 9, and any primary runoff election, now rescheduled for August 11. Nine weeks is the timeframe the legislature adopted to allow sufficient time for the State to certify the results from its primary election and prepare ballots for any runoff contests in time to transmit them 45 days before the runoff election, in this instance by June 27. *See also United States v. Georgia*, 2013 WL

12156084, at *3 (N.D. Ga. July 11, 2013) (ordering that Georgia’s federal primary election be held nine weeks before its federal primary runoff election).

Plaintiffs have requested that this Court move Georgia’s 2020 primary election from June 9 to June 30, but they have not sought a postponement of the primary runoff election date. *See, e.g.*, Complaint ¶ 64 (ECF No. 1); Pls.’ Mot. P. Inj. ¶ 1 (ECF No. 11). Because of the proximity between the proposed June 30 primary election date and the August 11 primary runoff election date (which would include any runoff election for federal office that may be held), the Plaintiffs’ proposal would conflict with UOCAVA’s explicit requirement that states transmit ballots to the voters protected under the Act at least 45 days before a federal election.

In their complaint, Plaintiffs contend generally that “[m]ilitary and overseas voters can also receive ballots for the August 11 runoff in a timely fashion with the more compressed June 30 election schedule.” Complaint ¶ 64 (ECF No. 1). In their brief in support of their motion for a preliminary injunction, Plaintiffs point to the provision of UOCAVA that requires states holding federal runoff elections to establish a written plan ensuring that ballots are “made available to absent uniformed services voters and overseas voters in a manner that gives them

sufficient time to vote in the runoff election.” Br. Supp. Pls.’ Mot. P. Inj. at 14 (ECF No. 20) (citing 52 U.S.C. § 20302(a)(9)). Plaintiffs ignore, however, the key requirement set forth in the preceding sub-section of UOCAVA, 52 U.S.C. § 20302(a)(8), that absentee ballots be transmitted to UOCAVA voters who timely request them “at least 45 days before an election for Federal office.” Every court that has examined the relationship between these two statutory provisions, including both the Eleventh Circuit and this Court, has held that the 45-day advance ballot transmission deadline established in 52 U.S.C. § 20302(a)(8) applies to federal runoff elections and has rejected arguments similar to those made by Plaintiffs here. *See Alabama*, 778 F.3d at 928-29; *Georgia*, 952 F. Supp. 2d at 1326, 1328, 1331.

Further postponing the primary election until June 30 without also adjusting the date of the primary runoff election would leave only 42 days between the elections, making it impossible for the State to transmit ballots 45 days before that runoff election date. June 27th is the 45-day deadline for transmitting ballots before any federal runoff elections on August 11.⁵ If the Court were to grant

⁵ We note that the State needs some period of time prior to the deadline to finalize and print ballots for the runoff election.

Plaintiffs' requested relief, the 45-day advance ballot transmission deadline under UOCAVA for the primary runoff election would occur before the Plaintiffs' proposed new primary date of June 30th, and the identity of the candidates who are subject to a primary runoff election would not yet be known. Such a situation would make compliance with UOCAVA impossible and create the real possibility of disenfranchising military and overseas voters in a federal runoff election. In addition, if the Court were to grant Plaintiffs' additional request to extend the UOCAVA ballot receipt deadline for the primary election further past the primary election date, *see* Pls. Mot. P. Inj. ¶ 7 (ECF No. 11), the time available to prepare ballots for any primary runoff election may be even more compressed.

We also note that if, as a consequence of Plaintiffs' request, the primary runoff election was also further delayed into late August or early September, it could at some point affect the State's ability to comply with UOCAVA for the November election. States must also comply with UOCAVA's 45-day advance transmission deadline for the November 3, 2020 federal general election. This year, the 45-day deadline to transmit UOCAVA ballots is Saturday, September 19.

CONCLUSION

For the foregoing reasons, the United States respectfully requests that if this Court decides to modify Georgia's 2020 federal election calendar, it avoids modifications that would prevent the State from transmitting ballots to UOCAVA voters at least 45 days before any election for federal office, including any primary runoff election and the general election. Federal law requires that Georgia's UOCAVA voters, many of whom are deployed in service to our country, are provided the full opportunity to vote embodied in UOCAVA.

Respectfully submitted,

Date: May 8, 2020

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CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies, pursuant to LR 7.1.D, N.D. Ga., that the foregoing Statement of Interest of the United States under the Uniformed and Overseas Citizens Absentee Voting Act was prepared in Times New Roman 14-point font.

May 8, 2020

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed through the ECF system and therefore will be sent electronically to counsel.

May 8, 2020

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