



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 31, 2015

The Honorable Joseph R. Biden, Jr.
President
United States Senate
Washington, DC 20510

Dear Mr. President:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, §§ 587, we are pleased to transmit to you the Attorney General's annual report.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink that reads "Peter J. Kadzik for". The signature is written in a cursive, flowing style.

Peter J. Kadzik
Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 31, 2015

The Honorable Orrin G. Hatch
President Pro Tempore
United States Senate
Washington, DC 20510

Dear Mr. President:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, §§ 587, we are pleased to transmit to you the Attorney General's annual report.

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Washington, D.C. 20530

December 31, 2015

The Honorable Paul Ryan
Speaker
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, §§ 587, we are pleased to transmit to you the Attorney General's annual report.

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Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 31, 2015

The Honorable Kevin McCarthy
Majority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, §§ 587, we are pleased to transmit to you the Attorney General's annual report.

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 31, 2015

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, §§ 587, we are pleased to transmit to you the Attorney General's annual report.

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Assistant Attorney General

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U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 31, 2015

The Honorable Nancy Pelosi
Minority Leader
U.S. House of Representatives
Washington, DC 20515

Dear Madam Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, §§ 587, we are pleased to transmit to you the Attorney General's annual report.

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Assistant Attorney General

Enclosure



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

December 31, 2015

The Honorable Harry Reid
Minority Leader
United States Senate
Washington, DC 20510

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, §§ 587, we are pleased to transmit to you the Attorney General's annual report.

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Peter J. Kadzik
Assistant Attorney General

Enclosure

**United States Department of Justice
Uniformed and Overseas Citizens Absentee Voting Act
Annual Report to Congress
2015**

I. Summary

The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, 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), requires States to afford military and overseas voters a meaningful opportunity to register and vote absentee in elections for Federal office. Protecting the voting rights of military and overseas voters remains one of the highest priorities of the Department of Justice ("Department"). This report describes the Department of Justice's work to enforce this important statute in 2015.

Although 2015 was an "off-year" in the Federal election cycle, the Department continued significant work to enforce UOCAVA through its litigation of pending enforcement actions and other monitoring work. The Department monitored compliance in States that held special elections to fill Congressional vacancies in 2015. Its UOCAVA enforcement activities resulted in a new lawsuit filed against one State to remedy a UOCAVA violation in connection with special elections for Federal office. In addition, the Department successfully resolved two cases brought to ensure UOCAVA compliance for Federal runoff elections in Alabama and Georgia. Also, in late December 2014, the Department obtained a favorable decision and final judgment in an action to enforce UOCAVA in West Virginia prior to the 2014 Federal general election. Finally, in our UOCAVA litigation against the State of New York, the court ordered a schedule for conducting the 2016 Federal elections to effectuate the ruling the Department obtained in 2012 requiring an earlier primary election date to facilitate UOCAVA compliance in Federal general elections. Copies of the significant court orders referenced herein are attached to this report.

In preparation for its nationwide compliance monitoring program for the 2016 Federal election cycle, the Department wrote to all of the chief State election officials¹ in November 2015 to remind them of their UOCAVA responsibilities and to request teleconferences to discuss their preparations for the primary elections. As in prior Federal election cycles, we requested that the State election offices monitor the transmission of absentee ballots and provide confirmation to the Department that ballots that were requested by the 45th day prior to the Federal elections were transmitted by that date.

In addition to our ongoing monitoring and enforcement efforts, the Department continued to advocate for legislation to provide even stronger protections for military and overseas voters. Again this year, the Department prepared a set of legislative proposals to enhance the enforcement of UOCAVA. These proposals were transmitted to Congress on November 10,

¹ UOCAVA defines "State" to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa. 52 U.S.C. § 20310(6). Consequently, our general references in this report to the phrase "State" include the District of Columbia and the enumerated territories.

2015 as part of the Department's Servicemembers Legislative Package, and are similar to sets of proposals transmitted to Congress in September 2011, May 2013, and April 2014 (referenced in the Department's UOCAVA Annual Reports to Congress in 2011, 2013, and 2014). The Department's UOCAVA proposals would enhance our ability to enforce these important protections, and we strongly urge passage of our proposals.

II. Background

UOCAVA, enacted in 1986, requires that States and Territories allow American citizens who are active duty members of the United States uniformed services and merchant marine, their spouses and dependents, and American citizens residing outside the United States to register and vote absentee in elections for Federal offices. UOCAVA was strengthened significantly in 2009 when Congress passed the MOVE Act to expand the protections for individuals eligible to vote under its terms.

The Secretary of Defense is the Presidential designee with primary responsibility for implementing the Federal functions mandated by UOCAVA, and the Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out the provisions of UOCAVA. 52 U.S.C. § 20301(a); 52 U.S.C. § 20307(a). The Attorney General has assigned responsibility for enforcement of UOCAVA to the Civil Rights Division. Since UOCAVA was enacted in 1986, the Division has initiated and resolved numerous cases to enforce UOCAVA. A case list and selected case documents are available at <http://www.justice.gov/crt/about/vot/litigation/caselist.php>.

Under the MOVE Act amendments, UOCAVA requires that the Attorney General submit an annual report to Congress by December 31 of each year on any civil action brought pursuant to the Attorney General's enforcement authority under UOCAVA during the preceding year. 52 U.S.C. § 20307(b). As detailed in its prior reports to Congress, the Department has engaged in extensive enforcement of the MOVE Act's requirements since they went into effect for the 2010 general election.

III. Enforcement Activity by the Attorney General in 2015

A. Civil Actions Filed in 2015 to Enforce UOCAVA

Illinois: On April 6, 2015, the Department filed a lawsuit against the State of Illinois, alleging imminent UOCAVA violations arising from the election calendar for the special primary and special election to fill the seat of the U.S. Representative in Congress from the State's Eighteenth Congressional District. *United States v. Illinois*, No. 1:15-cv-2997 (N.D. Ill.). Under the truncated election schedule prescribed by state law, Illinois could not transmit absentee ballots to UOCAVA voters 45 days in advance of the special primary and special election. The case was resolved by a consent decree filed simultaneously with the complaint and entered by the Federal district court after a hearing on April 14, 2015. The consent decree established July 7, 2015 as the date for the special primary election and September 10, 2015 as the date for the special election to allow the election authorities sufficient time to complete all the pre-election steps necessary to timely transmit ballots to UOCAVA voters. The consent decree also provided notice and reporting requirements related to UOCAVA ballots. Additionally, it

specified that the State Board of Elections would take action as necessary to facilitate enlarging the State's statutorily imposed timetable for conducting future such special elections.

On July 31, 2015, Illinois adopted legislation that revised the state election code to enlarge the timeline for special elections to fill vacancies for U.S. Representative in Congress. The election calendar prescribed by the revised statute allows election officials to complete all the pre-election steps necessary to timely transmit ballots to UOCAVA voters.

B. Activity in Other Litigation by the Attorney General under UOCAVA

The Department continued to litigate and monitor compliance with orders in UOCAVA cases initiated in previous election cycles. Additional orders were entered in the following cases filed by the Department prior to 2015:

West Virginia: On December 22, 2014, the Department obtained a final judgment and order to successfully conclude its UOCAVA litigation against the State of West Virginia, filed prior to the 2014 Federal general election.

The United States filed a lawsuit against the State of West Virginia on October 31, 2014, alleging violations of UOCAVA arising from the failure to timely transmit final UOCAVA ballots to voters in State House of Delegates District 35 prior to the November 4, 2014 Federal general election. *United States v. West Virginia*, No. 2:14-cv-27456 (S.D.W.Va.). Although the original UOCAVA ballots were timely transmitted to the affected UOCAVA voters on or before UOCAVA's 45-day transmittal deadline of September 20, on October 1, the Supreme Court of Appeals of West Virginia resolved a legal contest over the replacement of a candidate in State Delegate District 35 and ordered that corrected ballots be issued to all absentee voters. On October 3, after UOCAVA's 45-day deadline, corrected ballots were transmitted to the affected UOCAVA voters in the legislative district. The State applied for a hardship waiver from the Federal Voting Assistance Program of the Department of Defense on October 1, which was later withdrawn and another request submitted on October 10. On October 20, 2014, the Department of Defense denied the State's waiver request. On October 30, the Supreme Court of Appeals of West Virginia denied the Secretary of State's motion to clarify its October 1 order regarding the order's effect on the Federal contests contained on the original ballots.

In its lawsuit, the Department alleged that the State's failure to transmit timely final absentee ballots to affected UOCAVA voters by the 45th day before the November 4, 2014 Federal general election, or to obtain a waiver from that requirement from the Department of Defense, violated UOCAVA. The lawsuit was partially resolved on November 3, 2014, through a consent decree approved by the Federal district court which, among other things, extended the deadline for counting the votes for Federal offices on any corrected ballots returned by affected UOCAVA voters to ensuring a 45-day transmittal time for those ballots.

However, in order to obtain a complete remedy for West Virginia's violation of

UOCAVA, the United States also sought a preliminary injunction requiring West Virginia to count the votes for Federal office on any of the original ballots returned by UOCAVA voters if the original ballot was the only ballot returned in time to be counted. Neither Defendant opposed the counting of the original ballots, with the Secretary of State taking the position that she could not count the original ballots in light of the West Virginia Supreme Court of Appeals' original order and refusal to clarify. On November 18, the Federal court declined to enter the preliminary injunction and instead set the case for trial. Upon the parties' filing of a joint stipulation of facts and representation that no contested issues of fact existed, the Federal court ordered that the trial be cancelled and the parties submit final briefing on the merits of the case.

On December 22, 2014, the Federal court issued its decision and entered judgment for the United States. The court ordered West Virginia to count the votes for Federal office contained on the remaining UOCAVA ballots at issue in the case and include them in the final vote totals for the November 4, 2014 Federal general election.

Alabama: In 2015, the Department continued its litigation against Alabama for the State's failure to transmit ballots to UOCAVA voters at least 45 days prior to the 2012 Federal primary election and failure to ensure ballots would be transmitted by the 45th day before any Federal primary runoff election that would be needed. *United States v. Alabama*, No. 2:12-cv-179 (M.D. Ala.); *see also United States v. Alabama*, No. 14-11298 (11th Cir.).

In 2012, the court granted the Department's motions for preliminary injunctive relief and in 2013 granted relief to ensure Alabama's UOCAVA compliance for a special election to fill a Congressional vacancy. Also in 2013, the United States moved for summary judgment based on undisputed evidence that Alabama had violated UOCAVA's 45-day advance transmission deadline in the three previous regularly scheduled Federal elections—the November 2, 2010 general election, the March 13, 2012 primary election, and the November 6, 2012 general election – and that Alabama's statutory primary runoff calendar, which requires a runoff to be held 42 days following a primary election, violates UOCAVA's 45-day transmittal deadline for Federal primary runoff elections. *See* U.S. Department of Justice, UOCAVA Annual Reports to Congress, 2012 and 2013. In 2014, following court-ordered mediation, the court entered a consent order that included a plan to ensure Alabama's compliance with UOCAVA's 45-day deadline in all future Federal elections (other than runoff elections) and thereby resolved the United States' claim related to Alabama's failures to timely transmit UOCAVA ballots in Federal primary and general elections.

Also in 2014, the court granted the United States' motion for summary judgment on its runoff election claim. The court declared that UOCAVA's 45-day transmittal requirement applies to Federal runoff elections and that Alabama's runoff statute violated UOCAVA's 45-day transmittal requirement, and gave the parties 14 days to propose or request any additional relief. On February 25, 2014, Alabama filed an unopposed proposed remedial order designed to prevent future UOCAVA violations under Alabama's primary runoff statute. On March 4, 2014, the court adopted the State's proposal as a "consent order" ordering Alabama to hold any Federal runoff elections nine weeks (63 days) after the Federal primary election. Alabama appealed the court's order

granting summary judgment to the United States on the runoff claim, and requested that the court's March 4, 2014 consent order be vacated.

On January 15, 2015, a three-judge panel in the Eleventh Circuit heard oral argument in Alabama's appeal. On February 12, 2015, the Eleventh Circuit affirmed the district court's ruling, and found that UOCAVA's 45-day advance transmission requirement applies to Federal runoff elections. On March 24, 2015, Alabama filed a petition for rehearing en banc, which was denied by Eleventh Circuit on April 21, 2015. On August 14, 2015, the Governor of Alabama signed into law Act No. 2015-518, which permits the use of ranked ballots for Alabama's UOCAVA voters when there is the potential for a Federal primary runoff election. On August 24, 2015, Alabama filed a motion for relief with the district court requesting that it vacate its injunction requiring Alabama to hold any Federal primary runoff election 63 days after the primary election and allow Act No. 2015-518 to be implemented in its stead. On September 25, 2015, the United States filed with the court a notice that it did not oppose Alabama's motion. On October 5, 2015, the district court granted Alabama's motion, permitting the State to 1) use ranked ballots under Act No. 2015-518 for Alabama's UOCAVA voters when there is the potential for a Federal primary runoff election and 2) return the date for Federal primary runoff elections voters to 42 days following the Federal primary election. The court further ordered monitoring and reporting requirements for the 2016 Federal election cycle. The parties are currently negotiating the terms of those requirements.

Georgia: In 2015, the Department successfully concluded its litigation against Georgia to obtain compliance with UOCAVA in Federal runoff elections. *United States v. Georgia*, No. 1:12-cv-2230 (N.D. Ga.); *see also United States v. Georgia*, No. 13-14065 (11th Cir.).

In June 2012, the United States filed a lawsuit and motion for emergency injunctive relief alleging that Georgia's Federal primary runoff election schedule violated UOCAVA by failing to allow the required 45-day transmittal time for UOCAVA ballots. The court granted the requested emergency relief in July 2012, and in 2013 granted the United States' motion for summary judgment, holding that UOCAVA's 45-day transmission requirement applies to Federal runoff elections. The court ordered that Georgia's Federal primary runoff be held nine weeks after the Federal primary election and thirteen weeks before the Federal general election, and that its Federal general runoff elections be held nine weeks after the Federal general election. On January 21, 2014, after filing an appeal of the district court's decision to Eleventh Circuit, Georgia enacted legislation adopting for Federal elections the electoral calendar that had been imposed by the district court. The adjusted schedule allows sufficient time for the State to comply with UOCAVA's 45-day deadline in Federal runoff elections.

On June 13, 2014, the Court of Appeals heard oral argument in the case. On January 26, 2015, in response to an order by the Court of Appeals, the parties filed supplemental letter briefs addressing whether the legislation adopted by Georgia in January 2014 altering the State's electoral calendar rendered the case moot. Thereafter, on February 24, 2015, the Court of Appeals dismissed Georgia's appeal as moot and vacated the judgment of the district court, finding that under Georgia's new law, the State's election calendar satisfied UOCAVA's 45-day transmittal requirement. Noting the Court of

Appeals' February 12, 2015 ruling on the runoff issue in *United States v. Alabama*, No. 14-11298 (11th Cir.), the court concluded that because the adopted legislation encompassed comprehensive electoral reforms, it could not conclude that Georgia would return to its previous calendar if the appeal were dismissed as moot. On February 27, 2015, in response to the mandate of the appellate court, the district court dismissed the case for lack of subject matter jurisdiction.

New York: In *United States v. New York*, No. 1:10-cv-1214 (N.D.N.Y.), the Department's lawsuit against New York for violating UOCAVA in the 2010 Federal general election, the court entered an order requested by the State of New York setting the election calendar to govern the 2016 Federal elections.

In 2012, after New York failed to enact legislation to modify its election calendar to cure the structural issues that contributed to New York's late transmission of UOCAVA ballots in the 2010 Federal general election, the court granted the Department's motion for supplemental relief to alter the election calendar. The court entered a permanent injunction and ordered a modification of New York's Federal primary election date from September to June, setting the 2012 Federal primary election for June 26, 2012. The court further ordered that future Federal primary elections would be held on the fourth Tuesday in June, unless and until New York enacted legislation resetting the Federal primary date for one that complies fully with UOCAVA and is approved by the court.

The court's October 29, 2015 order, to which the Department lodged no objection, superseded provisions of New York law pertaining to the 2016 election calendar to ensure UOCAVA compliance for the June 28, 2016 Federal primary election and November 8, 2016 Federal general election. The State has yet to enact legislation to alter the codified September Federal primary election date.

ATTACHMENTS

**I. Enforcement Activity by the Attorney General
In 2015**

A. Civil Actions Filed in 2015 to Enforce UOCAVA

State of Illinois

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE STATE OF ILLINOIS;)
THE ILLINOIS STATE BOARD OF)
ELECTIONS; and STEVE SANDVOSS,)
Executive Director of the Illinois State)
Board of Elections,)
)
)
Defendants.)
)
)
_____)

Case No. 15-cv-____
Judge:

COMPLAINT

The United States of America alleges:

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 (“UOCAVA”), 52 U.S.C. §§ 20301 *et seq*, 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 authorized to enforce the provisions of UOCAVA, 52 U.S.C. § 20307, 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 Illinois’s 2015 special election to fill a vacancy in the State’s Eighteenth Congressional District, and in future special elections for United States

Representative in Congress. The Court has jurisdiction of this action pursuant to 52 U.S.C. § 20307 and 28 U.S.C. §§ 1345 and 2201.

3. UOCAVA requires that states permit UOCAVA voters “to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 52 U.S.C. § 20302(a)(1).

4. Defendant State of Illinois is responsible for complying with UOCAVA and ensuring that validly requested absentee ballots are transmitted to UOCAVA voters in accordance with the statute’s requirements. 52 U.S.C. §§ 20302 and 20310.

5. Defendant Illinois State Board of Elections is the state body with general supervisory powers over the administration of election laws in Illinois and is comprised of eight members appointed by the Governor. 10 Ill. Comp. Stat. 5/1A-1. Defendant Steve Sandvoss is the Executive Director of the Illinois State Board of Elections and is sued in his official capacity.

6. 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, unless a hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 52 U.S.C. §§ 20302(a)(8)(A) and 20302(g).

7. Pursuant to the Illinois Election Code, when a vacancy occurs in the office of United States Representative in Congress more than 180 days before the next general election, the Governor shall issue a writ within five days following the vacancy setting a date within 115 days to hold a special election to fill the vacancy. 10 Ill. Comp. Stat. 5/25-7(a).

8. Aaron Schock, the United States Representative from the State’s Eighteenth Congressional District, resigned effective March 31, 2015, which is more than 180 days before

the next election, thus triggering the Governor's obligation to issue a writ to hold a special election.

9. On March 31, 2015, the Governor issued writs ordering a special primary election and special election to fill the vacancy in the Eighteenth Congressional District. The Governor set the special election for July 24, 2015, and a special primary election, if necessary, for June 8, 2015.

10. Under the Illinois Election Code, the deadline for filing candidate nomination petitions must be at least 15 days after the issuance of the writ of election. *See* 10 Ill. Comp. Stat. 5/7-61. Petitions for nominations to fill a vacancy in the office of United States Representative in Congress must be filed between 54 and 50 days before a special primary election. 10 Ill. Comp. Stat. 5/25-7(b). Additionally, objections to candidate nomination petitions may be made within five business days after the deadline for filing such petitions. 10 Ill. Comp. Stat. 5/10-8.

11. Application of the referenced provisions of the Illinois Election Code prevents the State from ensuring transmittal of absentee ballots to UOCAVA voters at least 45 days before any special election to fill a vacancy in the office of United States Representative in Congress, including for the recently scheduled special primary election and special election in the Eighteenth Congressional District. Defendants' inability to transmit absentee ballots to UOCAVA voters at least 45 days before an election for Federal office constitutes a violation of Section 102(a)(8)(A) of UOCAVA, 52 U.S.C. § 20302(a)(8)(A).

12. An order of this Court is necessary to require Defendants to take corrective action to protect the rights granted by UOCAVA. Specifically, an order is necessary to ensure that Illinois provides its UOCAVA voters the time specified under Federal law to receive, mark, and

submit their ballots and have those ballots counted in the imminent elections to fill the vacancy in Illinois' Eighteenth Congressional District, and to prevent UOCAVA violations in future special elections the State may hold for United States Representative in Congress.

WHEREFORE, the United States asks this Court to hear this action pursuant to 52 U.S.C. § 20307 and 28 U.S.C. §§ 1345 and 2201, and:

- (1) Issue a declaratory judgment that Defendants' failure to ensure that absentee ballots are transmitted to UOCAVA voters at least 45 days in advance of a special primary election and in advance of a special election for Federal office violates Section 102(a)(8)(A) of UOCAVA, 52 U.S.C. § 20302(a)(8)(A);
- (2) Issue a declaratory judgment that the provisions of the Illinois election code governing the schedule for special elections, to the extent they impede Defendants' ability to transmit absentee ballots to UOCAVA voters at least 45 days in advance of any special election to fill a vacancy for United States Representative in Congress, including the upcoming special elections to fill the vacancy in Illinois's Eighteenth Congressional District, violate Section 102(a)(8)(A) of UOCAVA, 52 U.S.C. § 20302(a)(8)(A); and
- (3) 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 implement an election schedule that ensures that absentee ballots can be transmitted to UOCAVA voters at least 45 days in advance of the upcoming special primary and special election to fill the vacancy in Illinois's Eighteenth Congressional District;

- (b) To take such steps as are necessary to afford UOCAVA voters affected by the Court's order a reasonable opportunity to learn of the Order;
- (c) To provide reports concerning the transmission, receipt, and counting of ballots for the special primary election and special election for United States Representative from Illinois' Eighteenth Congressional District; and
- (d) To take such other steps as are necessary to ensure that Illinois conducts all future special elections for United States Representative in compliance with UOCAVA requirements.

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.

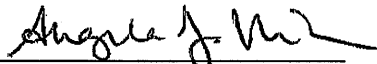
Date: April 6, 2015

ERIC H. HOLDER, JR.
Attorney General

ZACHARY T. FARDON
United States Attorney
Northern District of Illinois

VANITA GUPTA
Acting Assistant Attorney General
Civil Rights Division

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law to receive, mark, and submit their ballots and have those ballots counted in the upcoming special elections. The complaint also seeks relief to prevent such violations in future special elections to fill vacancies in the office of United States Representative in Illinois.

The United States and Defendants, through their respective counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. This consent decree is similar in nature to a consent decree entered by the Court in *United States v. Illinois*, No. 13-cv-00189 (N.D. Ill. 2013) (consent decree provided measures to remedy the specific violations of UOCAVA during the 2013 special primary and special election for United States Representative from the State's Second Congressional District). The parties share the goal of providing UOCAVA voters with the opportunity guaranteed by Federal law to participate in the upcoming Eighteenth Congressional District special election, as well as future special elections for Federal office. The parties have negotiated in good faith and hereby agree to the entry of this consent decree as an appropriate resolution of the UOCAVA violations alleged by the United States. Accordingly, the United States and Defendants stipulate and agree that:

1. This action is brought by the U.S. Attorney General on behalf of the United States pursuant to UOCAVA, 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 U.S. Attorney General is authorized to enforce the provisions of UOCAVA, 52 U.S.C. § 20307, and this Court has jurisdiction of this action pursuant to 52 U.S.C. § 20307 and 28 U.S.C. §§ 1345 and 2201.

3. UOCAVA provides that UOCAVA 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." 52 U.S.C. § 20302(a)(1). UOCAVA requires the State of Illinois

to ensure that validly requested absentee ballots are transmitted to UOCAVA voters in accordance with the statute's requirements. 52 U.S.C. §§ 20302 and 20310.

4. 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, unless a hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 52 U.S.C. §§ 20302(a)(8)(A) and 20302(g).

5. Defendant Illinois State Board of Elections is the state body with general supervisory powers over the administration of election laws in Illinois and is comprised of eight members appointed by the Governor. 10 Ill. Comp. Stat. 5/1A-1. Steve Sandvoss is the Executive Director of the Illinois State Board of Elections and is sued in his official capacity.

6. Under Illinois law, depending on the jurisdiction, the county clerk or the Board of Election Commissioners serve as "election authorities" that are responsible for the conduct of elections, including the administration of absentee voting, in their respective jurisdictions. 10 Ill. Comp. Stat. 5/1-1 *et seq.* Election authorities transmit ballots to UOCAVA voters, receive ballots returned by UOCAVA voters, and count the ballots as part of the election process. The State of Illinois, however, retains responsibility for ensuring compliance with UOCAVA. For purposes of this decree, the parties understand that although the local election authorities will continue to send, receive, and count UOCAVA ballots as provided for in state law, the State bears the responsibility of ensuring that the requirements of UOCAVA and this consent decree are met.

7. Pursuant to the Illinois Election Code, when a vacancy occurs in the office of United States Representative in Congress more than 180 days before the next general election, the

Governor shall issue a writ within five days following the vacancy setting a date within 115 days to hold a special election to fill the vacancy. 10 Ill. Comp. Stat. 5/25-7(a).

8. Aaron Shock, the United States Representative from the State's Eighteenth Congressional District, resigned effective March 31, 2015, which is more than 180 days before the next election, thus triggering the Governor's obligation to issue a writ to hold a special election.

9. On March 31, 2015, the Governor issued writs ordering a special primary election and special election to fill the vacancy in the Eighteenth Congressional District. The Governor set the special election for July 24, 2015, and a special primary election, if necessary, for June 8, 2015.

10. Pursuant to the Illinois Election Code, the deadline for filing candidate nomination petitions must be at least 15 days after the issuance of the writ of election. *See* 10 Ill. Comp. Stat. 5/7-61. Moreover, petitions for nominations to fill a vacancy in the office of United States Representative in Congress from the State must be filed between 54 and 50 days before a special primary election. 10 Ill. Comp. Stat. 5/25-7(b). Additionally, objections to candidate nomination petitions may be made within five business days after the deadline for filing such petitions. 10 Ill. Comp. Stat. 5/10-8.

11. Effective June 1, 2015, ballots from UOCAVA voters postmarked by midnight on election day will be counted if they are received by the 14th day following Election Day. *See* 10 Ill. Comp. Stat. 5/20-8, as amended by S.B. 0172, 98th Gen. Assemb. (Ill. 2014) (enacted).

12. Compliance with the referenced Election Code provisions prevents the State from ensuring transmission of absentee ballots to UOCAVA voters at least 45 days before special elections for Federal office, including the recently scheduled special primary election and special

election. As a result, the Illinois statute violates Section 102(a)(8)(A) of UOCAVA, 52 U.S.C. § 20302(a)(8)(A).

13. To avoid the burdens, delays, and uncertainties of litigation and to efficiently and expeditiously promote the parties' shared goal of ensuring that Illinois's UOCAVA voters will have sufficient opportunity under Federal law to participate in the upcoming special election for Federal office, the parties agree that this Court should enter an order regarding the upcoming elections to fill the vacant office of Representative of the State's Eighteenth Congressional District: (1) enjoining the application of provisions of the Illinois Election Code governing the schedule for special elections to the extent they impede Defendants' compliance with UOCAVA's ballot transmission deadlines in the upcoming special elections; and (2) adopting the attached Election Calendar establishing July 7, 2015 as the date for the special primary election and September 10, 2015 as the date for the special election. The Election Calendar enlarges the time period for conducting such an election sufficiently to guarantee that special primary election and special election ballots can be transmitted to UOCAVA voters at least 45 days before the elections.

14. The parties reserve the right to modify this agreement as necessary, and to seek additional supplemental relief, if information regarding additional UOCAVA violations is discovered.

WHEREFORE, the parties having freely given their consent, and the terms of the Decree being fair, reasonable, and consistent with the requirements of UOCAVA, it is hereby ORDERED, ADJUDGED, and DECREED by the Court that:

- (1) Defendants are enjoined from applying the provisions of the Illinois Election Code governing the schedule for special elections to the

extent they impede Defendants' compliance with UOCAVA's ballot transmission deadlines in the upcoming special elections to fill a vacancy in the office of United States Representative from the State's Eighteenth Congressional District.

- (2) Defendants shall, upon entry of this decree, order the pertinent election authorities to adopt the attached Election Calendar, which requires that absentee ballots timely requested by UOCAVA voters for the July 7, 2015 special primary election and September 10, 2015 special election be transmitted on or before the 45th day before those elections.

Provided, however, that in any objection proceedings held pursuant to the Illinois Election Code, candidate nominating petitions drafted and/or circulated so as to comply with the writs of election issued by the Governor on March 31, 2015, shall not be ruled deficient by the Illinois State Board of Elections because of the new election dates required by this decree, nor because of any change in the petition circulation period imposed by the Illinois State Board of Elections to conform to the new election dates required by this decree.

- (3) The Defendants shall provide a report to the United States Department of Justice no later than forty-three days before the July 7, 2015 special primary election concerning the transmittal of UOCAVA ballots by local election jurisdictions for that election. The report shall:
 - a. Certify whether absentee ballots were transmitted no later than the 45th day before the election to all qualified UOCAVA

voters whose applications for ballots were received and approved by that date; and

b. Indicate, by local election jurisdiction, the number of requests received and the number of UOCAVA absentee ballots transmitted by the 45th day before the election.

(4) The Defendants shall provide a report to the United States Department of Justice no later than forty-three days before the September 10, 2015 special election concerning the transmittal of UOCAVA ballots by local election jurisdictions for that election. The report shall:

a. Certify whether absentee ballots were transmitted no later than the 45th day before the election to all qualified UOCAVA voters whose applications for ballots were received and approved by that date; and

b. Indicate, by local election jurisdiction, the number of requests received and the number of UOCAVA absentee ballots transmitted by the 45th day before the election.

(5) Upon entry of this consent decree, the Defendants shall issue a press statement for immediate release, posted immediately on the Illinois State Board of Elections website and distributed to the Federal Voting Assistance Program (FVAP); International Herald Tribune (<http://www.iht.com>); USA Today International (<http://www.usatoday.com>); Military Times Media Group (cvinch@militarytimes.com); Overseas Vote Foundation

(<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes

(<http://www.estripes.com>); and any other newspaper or news

media within Illinois that Defendants determine appropriate to

reach UOCAVA voters in the Eighteenth Congressional district.

The news release shall, at a minimum: (a) summarize this order,

clarifying the correct election dates; (b) identify the deadlines

relevant to UOCAVA voters; and (c) provide appropriate contact

information for the State Board of Elections for assistance.

- (6) The Defendants shall take such actions as are necessary to assure that all future special elections for Federal office are conducted in accordance with UOCAVA, including proposing legislation and taking any administrative actions needed to alter Illinois' statutorily imposed timetable for conducting special elections for filling vacancies in the office of United States Representative in Congress. Specifically, the State Board of Elections will recommend amendments to the Election Code as required to enlarge the time period for conducting such elections sufficiently to guarantee that special primary election and special election ballots can be transmitted to UOCAVA voters at least 45 days before the date of the election. The parties agree to confer on the progress of this effort, and Defendants shall file with the Court a status report on this proposed legislation no later than June 2, 2015.

The Court shall retain continuing jurisdiction over this action until the State has adopted a UOCAVA-compliant timetable for conducting all future special primary elections and special elections to fill vacancies in the office of United States Representative in Congress. The Court may enter further relief as necessary for the effectuation of the terms of this consent decree and to abate any UOCAVA violation with respect to future Federal special elections.


The undersigned agree to entry of this consent decree.

For the Plaintiff:

ZACHARY T. FARDON
United States Attorney
Northern District of Illinois

VANITA GUPTA
Acting Assistant Attorney General
Civil Rights Division

By: /s/ Patrick W. Johnson
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Date: April 6, 2015

For the Defendants:

State Board of Elections

By: 

Title: Executive Dir.

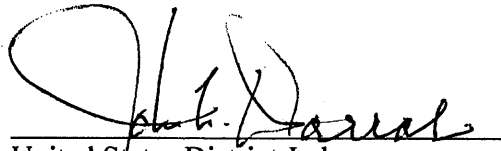
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Date: April 6, 2015

SO ORDERED this 14th day of April, 2015.


United States District Judge

14

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ILLINOIS**

USA)	Case No: 15 C 2997
)	
v.)	Judge: John W. Darrah
)	
The State of Illinois)	
)	

ORDER

Ruling on motion hearing held. Joint motion requesting expedited entry of consent decree is granted [3]. Enter order. Civil case closed.

(T:) 00:05

Date: 4/14/15

/s/ Judge John W. Darrah

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 15 C 2997
)	
THE STATE OF ILLINOIS, et al.,)	Judge Darrah
)	
)	
Defendants.)	

STATUS REPORT

The defendants, the State of Illinois, the Illinois State Board of Elections, and Steven Sandvoss, the Executive Director of the Illinois State Board of Elections, by their attorney, Lisa Madigan, Attorney General of Illinois, submit the following status report required by the consent decree.

Illinois will be having a special congressional election for its Eighteenth Congressional District. The special primary is scheduled for June 8, 2015 and the special general election is scheduled for July 24, 2015. These dates were set under the decree to allow sufficient time to comply with the timing requirements of the Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA), 52 U.S.C. §§ 20301 et seq. The relevant section of the Illinois Election Code, 10 ILCS 5/25-7, did not allow sufficient time to permit compliance with federal law.

The Illinois General Assembly has now taken action to remedy this situation for future special congressional elections. On May 31, 2015, Senate Bill 1256, House Floor Amendment No. 1, was passed to amend Section 25-7 of the Election Code to harmonize it with the

requirements of the UOCAVA. The legislature has 30 days from date of passage to send the bill to the Governor, who has 60 days to take action on it. A summary of the amendment from the General Assembly website is attached.

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

s/Thomas A. Ioppolo
Assistant Attorney General
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(312) 814-7198

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	No. 15 C 2997
)	
THE STATE OF ILLINOIS, et al.,)	Judge Darrah
)	
)	
Defendants.)	

CORRECTED STATUS REPORT

The defendants, the State of Illinois, the Illinois State Board of Elections, and Steven Sandvoss, the Executive Director of the Illinois State Board of Elections, by their attorney, Lisa Madigan, Attorney General of Illinois, submit the following status report required by the consent decree.

The status report filed on June 3, 2015 reported the wrong election dates. The date of the special primary election is July 7, 2015. The date of the special general election is September 10, 2015.

Respectfully submitted,

LISA MADIGAN
Attorney General of Illinois

s/Thomas A. Ioppolo
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(312) 814-7198

**I. Enforcement Activity by the Attorney General
in 2015**

**B. Activity in Other Litigation by the
Attorney General under UOCAVA**

State of West Virginia

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:14-27456

THE STATE OF WEST VIRGINIA
and NATALIE E. TENNANT,
Secretary of State of West Virginia,
in her official capacity,

Defendants.

MEMORANDUM OPINION & ORDER

The dispute in this case arises out of the administration of the November 4, 2014 election, and in particular the provision of absentee ballots to certain overseas citizens and uniformed service members. For reasons that are more fully described below, thirty absentee voters in the 35th House of Delegates District were provided with two separate absentee ballots -- an original ballot, and, later, a corrected ballot -- in the run up to the election. Four of those voters returned only original ballots. Those four ballots are the only ones now at issue in this case. The West Virginia Secretary of State, Natalie Tennant, has ordered that those original ballots may not be counted. The United States maintains that they must

be counted in the races for United States Senate and United States House of Representatives.

On November 25, 2014, the parties presented their Integrated Pretrial Order. On the same date, the parties entered into a joint stipulation of facts and informed the court that no material fact remained in dispute between them.¹ The United States submitted its brief on the merits on December 5, 2014. The defendants responded on December 12, 2014, and the plaintiff replied on December 18, 2014. The court now makes the following findings of fact and conclusions of law.

I.

The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 52 U.S.C.A. §§ 20301-20311 (2014), is a federal law that requires states to permit uniformed service voters and overseas citizens to "vote by absentee ballot in general, special, primary, and runoff elections for Federal office[.]" 52 U.S.C.A. § 20302(a)(1). States are specifically responsible for transmitting absentee ballots to "absent uniformed service

¹ The joint stipulation also includes a number of documentary exhibits. The parties have stipulated that those documents are admissible, and agree "not to impose evidentiary objections to those documents on the basis of authenticity, foundation, hearsay, or relevancy." Joint Stipulation of Undisputed Facts and Law ("Joint Stip.") at 8.

voter[s] or overseas voter[s] . . . not later than [forty-five] days before the election," provided that the voter requests the ballot at least forty-five days before the election. Id. § 20302(a)(8)(A). Under the statutory framework, the deadline for transmitting absentee ballots to absent uniformed service members and overseas citizens (the "UOCAVA voters") who requested them at least forty-five days before the November 4, 2014 election was September 20, 2014. See Joint Stip. ¶ 7.

The parties agree that the defendants initially transmitted ballots to UOCAVA voters in a timely manner on September 19, 2014 (the "original ballots"). See Joint Stip. ¶ 9. Three days after that deadline, however, the Kanawha County Republican Executive Committee ("KREC") and Marie McDavid filed a petition for a writ of mandamus with the Supreme Court of Appeals of West Virginia, seeking to require Secretary Tennant and the State Election Committee to substitute McDavid as the Republican candidate in the race for the House of Delegates in the State's 35th House District following the withdrawal of the party's original candidate. Joint Stip. ¶ 10; see also State ex rel. McDavid v. Tennant, No. 14-939, slip op. at 1-2 (W. Va. Oct. 1, 2014). Specifically, the petition prayed that the Supreme Court of Appeals would compel the Secretary of State to certify McDavid, add her to the ballot, and --

critically -- instruct the Kanawha County Clerk to "mail valid ballots to all absentee voters with instructions that the invalid ballot that is incomplete shall be void."

On October 1, 2014, the Supreme Court of Appeals ruled in favor of McDavid and the KREC, granted the writ of mandamus, ordered McDavid's name to be added to the ballot, and ordered the Secretary of State to issue corrected ballots. Joint Stip. ¶ 11; McDavid, No. 14-0939, slip op. at 10. The court's opinion did not specifically address whether the original ballots were to be considered void but, as noted, the writ was granted. That same day, Vera J. McCormick, the Clerk of the Kanawha County Commission, wrote to the thirty UOCAVA voters in the 35th House District who previously received the original ballots, informed them of the Supreme Court of Appeals' decision, and advised that new ballots would be forthcoming in due course. Joint Stip., Ex. 2. The letter asked the UOCAVA voters to "return [the] original ballot in addition to th[e] new ballot," but did not indicate whether the original ballot remained valid. Id.

On October 3, 2014, just thirty-two (rather than forty-five) days prior to the election, revised ballots listing McDavid as a candidate (the "corrected ballots") were transmitted to the UOCAVA voters in the 35th House District. Joint Stip. ¶ 16. The October 3, 2014 transmission also

included instructions to the UOCAVA voters on how to return their ballots. Joint Stip. ¶ 37. Those instructions directed voters to, among other things, read and sign an enclosed "Oath of Voter" that contained the following attestation:

I understand that I may only cast one ballot in any election. I further understand that anyone who votes more than once in the same election; or knowingly votes or attempts to vote more than one ballot for the same office . . . shall be guilty of a misdemeanor, and, on conviction thereof, shall for each offense be fined not more than one thousand dollars or confined in the county jail for not more than one year, or both[.]

Joint Stip., Ex. 3 at 4. The instructions did not otherwise explain whether the original ballots remained valid, or whether the UOCAVA voters were required to return a corrected ballot.

Joint Stip. ¶ 37.

Five days later, on October 8, 2014, Secretary Tennant's office sent a follow up e-mail to the UOCAVA voters in the 35th House District that read, in pertinent part, as follows:

As you may be aware, a change was made to the ballot after the original absentee ballot was mailed to you. The County Clerk['s office] . . . continue[s] their efforts to make sure you have an opportunity to vote the corrected ballot. . . . The Department of Justice has requested that this office . . . reach out to you to verify that you have received the corrected ballot and that you have enough time to return it to be counted.

Joint Stip., Ex. 5. The e-mail "did not address whether original ballots cast by UOCAVA voters would be counted and did not address the validity of any votes cast for the Federal offices on the original ballot." Joint Stip. ¶ 39.

In the weeks that followed, most of the UOCAVA voters in the 35th House District responded to the Secretary's outreach efforts and confirmed that they received the corrected ballot; many also indicated that they foresaw no barrier to returning the corrected ballot in time to be counted. Some voters never responded at all. Two of the four voters at issue (Voter A and Voter B) called the Kanawha County Commission and explained that they had already returned the original ballot and shredded their corrected ballots. Joint Stip. ¶ 40. They indicated that they did not intend to return corrected ballots, id., and later clarified that they received the corrected ballot after submitting their original ballots and were "afraid to send back two ballots," Joint Stip. ¶ 56.

On October 14, 2014, Secretary Tennant's office e-mailed Voter A and Voter B, and advised them that it was "not certain that the first (pre-correction) ballot w[ould] be counted." Joint Stip., Ex. 6. The e-mail explained that "[a]ny decision on whether to count the [original] ballot w[ould] be made by the Kanawha County [Commission's] board of canvassers,"

and warned that "[t]he only way to be certain that your vote will count is to vote and submit the corrected ballot[.]" Id. It appears, however, that Voter A and Voter B did not receive the Secretary's e-mail until possibly as late as November 10, 2014.²

As the Secretary's e-mail to Voter A and Voter B demonstrates, there was a prevailing sense of uncertainty about the validity of the original ballots throughout the month of October. In a letter to federal officials dated October 3, 2014, the Secretary's office stated that it had "received assurance that if the second ballot . . . [wa]s not returned in time to be counted, but the initial ballot ha[d] been returned, [Kanawha County would] count the initial ballot." Joint Stip. ¶ 15. Based on other correspondence in the record, it appears that the Kanawha County board of canvassers in fact "voted to accept all [original] ballots" at some point before October 21, 2014. See Joint Stip., Ex. 1. Nevertheless, perhaps hoping to remove any doubt, Secretary Tennant filed a motion, on October 27, 2014, with the Supreme Court of Appeals, requesting clarification that the decision in McDavid did not prohibit

² Voter A and Voter B are identified in the record as a mother and son living together in Canada. Joint Stip. ¶¶ 51, 55. An e-mail from Voter A to the Secretary of State's office, dated November 10, 2014, stated that "she could not reply until [then] because her computer broke." See Joint Stip. ¶ 56.

counting votes cast on validly executed original ballots in the federal races, provided that no corrected ballot was received. See Joint Stip. ¶ 23. Three days later, on October 30, 2014, the Supreme Court of Appeals refused the request for clarification without comment, Joint Stip. ¶ 25, and the Secretary interpreted that refusal as "an affirmative indication that the writ of mandamus" granted in McDavid "prohibits the counting of any votes cast on any original ballot," Joint Stip. ¶ 26.

The following day, the Friday before Election Day, the United States initiated this action, charging the State and the Secretary of State with violating the UOCAVA and requesting: (1) "a declaratory judgment under 28 U.S.C. § 2201 that the failure . . . to ensure that absentee ballots [were] transmitted . . . at least 45 days in advance of the November 4, 2014 [election] . . . violates 52 U.S.C. § 20302(a)(8)(A)"; and (2) an injunction ordering the defendants to "take such steps as are necessary to ensure that affected UOCAVA voters in State Delegate District 35 have sufficient opportunity . . . to receive, mark, and return their ballots." See Compl. at Prayer of Relief.

On Monday, November 3, 2014, the parties submitted, and the court entered, a consent decree that extended the receipt deadline for corrected ballots returned by mail until

November 17, 2014; the consent decree also required the Secretary of State to inform the UOCAVA voters in the 35th House District -- for the first time -- that "they had to return the corrected ballot . . . if they wished to have their vote counted in the election." Joint Stip. ¶¶ 29, 45-46, 48.

Notwithstanding the deadline extension, the United States reserved the right to move for "supplemental relief . . . with regard to the counting of votes . . . on an original ballot . . ., if that ballot [wa]s the only ballot returned by that voter[.]" Consent Decree at 8; see also Joint Stip. ¶ 29.

Election Day came and went, and eighteen of the thirty UOCAVA voters in the 35th House District returned corrected ballots. Joint Stip. ¶ 49. Eight more returned no ballot. Joint Stip. ¶ 50. The remaining four voters returned original ballots on or before November 4, 2014, but did not return a corrected ballot. Joint Stip. ¶ 51. Those four included Voter A and Voter B, plus two others -- Voter C and Voter D³ -- who both previously informed Secretary Tennant's office that they received the corrected ballot and foresaw no obstacle to returning it, but nevertheless returned only the original ballot.

³ "According to information on file with the State, [Voter C and Voter D] reside[] domestically in North Carolina[.]" Joint Stip. ¶ 51.

Finally, on November 6, 2014, prior to the start of canvassing, Secretary Tennant issued an order directing "the Kanawha County board of canvassers to NOT count any [original] ballot in any federal, state or county election on the ballot[.]" As a result, no votes cast on original ballots were counted in the canvass for the two federal races.

II.

All that remains to be determined in this case is the fate of the votes cast on original ballots by Voters A, B, C, and D in the races for United States Senate and United States House of Representatives (the "contested votes"). The United States has requested an injunction ordering the defendants to count those votes and include them in the tally for the House and Senate elections. The Secretary "believe[s] that all voters who cast only [o]riginal [b]allots should have their votes counted," but also maintains that the Supreme Court of Appeals' decision in McDavid prohibits her from ordering the contested votes to be counted. See Secretary of State's Response to the United States' Brief on the Merits ("Secretary's Resp.") at 1-2. She has declined to take a position on whether the relief requested by the United States is appropriate. Id. at 4. The State of West Virginia responds that it "does not oppose the

relief requested by the United States in its brief on the merits." West Virginia's Response to the United States' Brief on the Merits ("State's Resp.") at 1.

The UOCAVA empowers the Attorney General to seek "declaratory or injunctive relief as may be necessary to carry out" the statute's requirements. See 52 U.S.C.A. § 20307(a). As noted, the United States' complaint in this case sought both forms of relief -- a declaration that the defendants violated 52 U.S.C. § 20302(a)(8)(A), and an injunction ordering the defendants to "take such steps as are necessary to ensure that affected UOCAVA voters in State Delegate District 35 have sufficient opportunity . . . to receive, mark, and return their ballots." See Compl. at Prayer of Relief. In addition, the pretrial order prepared by the parties raises the alternative theory that the "State's failure to count the votes for Federal office cast on the four ballots at issue violates" 52 U.S.C.A. § 20302(a)(1), which generally requires each state to "permit [UOCAVA] voters to use absentee registration procedures and to vote by absentee ballot in" federal elections. Thus, the resolution of this case turns on two questions: First, did the defendants violate §§ 20302(a)(1) or 20302(a)(8)(A)? Second, if so, is the United States entitled to the injunction it seeks?

A.

The first question is easily answered. Section 20302 (a) (8) (A) requires States to transmit validly requested absentee ballots to "absent uniformed service voter[s] or overseas voter[s] . . . not later than [forty-five] days before the election," provided that the voter requests the ballot at least forty-five days before the election. Id. § 20302(a) (8) (A). The parties agree that all thirty of the UOCAVA voters in the 35th House District requested an absentee ballot more than forty-five days before the election, see Joint Stip. ¶ 9, and also agree that corrected ballots were not transmitted to those voters until October 3, 2014, only thirty-two days before the election, Joint Stip. ¶ 16. The parties have stipulated, and the court agrees, that transmitting the corrected ballots on October 3, 2014 violated § 20302(a) (8) (A).⁴ See, e.g., United States v. Alabama, 857 F. Supp. 2d 1236, 1240-42 (M.D. Ala. 2012) (finding high likelihood of success on the merits of a § 20302(a) (8) (A) claim where the state issued absentee ballots less than forty-five days before a federal election); see also, Joint Stip. ¶ 8.

⁴ In light of this disposition, the court need not address whether the defendants' conduct violated § 20302(a) (1).

B.

The remaining question is more complex. To obtain a permanent injunction, the plaintiff "must demonstrate: (1) that it has suffered an irreparable injury; (2) that remedies at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction." eBay Inc. v. MercExchange, L.L.C., 547 U.S. 388, 391 (2006); PBM Prods., LLC v. Mead Johnson & Co., 639 F.3d 111, 126 (4th Cir. 2011) (reciting the eBay factors). Even then, both the UOCAVA and the limits of the court's equitable powers dictate that the relief prayed for must be no more than is necessary to carry out the statute's requirements. See 52 U.S.C.A. § 20307(a) ("The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out this chapter."); Kentuckians for the Commonwealth, Inc. v. Rivenburgh, 317 F.3d 425, 436 (4th Cir. 2003) ("It is well established that 'injunctive relief should be no more burdensome to the defendant than necessary to provide complete relief to the plaintiffs.'" (quoting Califano v. Yamasaki, 442 U.S. 682, 702 (1979))). In other words, any injunction granted must

"carefully address only the circumstances in the case," without sweeping more broadly than "necessary to provide complete relief to the plaintiff." Mead Johnson & Co., 639 F.3d at 128 (internal quotation marks and citation omitted).

1.

After considering the relevant factors, the court concludes that injunctive relief is proper. As it stands, four UOCAVA voters who attempted to cast an absentee ballot would not have their votes counted in the federal races. "Courts routinely deem restrictions on fundamental voting rights irreparable injury." League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014) (collecting authority), mandate stayed North Carolina v. League of Women Voters of N.C., 135 S. Ct. 6 (Oct. 8, 2014) (mem.). Several courts have therefore concluded that a state's failure to timely issue UOCAVA ballots clearly presents the likelihood, Alabama, 857 F. Supp. 2d at 1240-42, or reality of irreparable harm, United States v. Georgia, 952 F. Supp. 2d 1318, 1331-32 (N.D. Ga. 2013) ("Irreparable harm occurs when a UOCAVA voter is denied the right to receive a sufficient absentee ballot in accordance with the provisions of" § 20302(a)(8)(A)). More generally, courts also recognize that a state's failure to count absentee ballots protected by federal law gives rise to

irreparable harm. Cf. Hoblock v. Albany Cnty. Bd. of Elections, 422 F.3d 77, 97 (2d Cir. 2005) ("The district court found that the plaintiff voters will be irreparably harmed if the Board certifies the election results without counting their absentee ballots. We agree."); Hershcopf v. Lomenzo, 350 F. Supp. 156, 159 (E.D.N.Y. 1972) ("The fact that throughout the state at least nineteen boards of elections apply the statute so that absentee voters . . . will be disenfranchised is sufficient irreparable injury[.]"). There is no prospect that such an injury could be remedied by money damages.

Regarding the third factor, the court finds that the balance of the equities tips in favor of the United States. The potential harm to the UOCAVA voters -- the possibility that their votes will not be counted -- far exceeds the burden to the State caused by counting the contested votes. See Alabama, 857 F. Supp. 2d at 1242 (noting that the State is already "legally mandated . . . to vindicate the fundamental right of its military and overseas constituents to vote in federal elections" under the express terms of the UOCAVA). Indeed, the State does not object to the additional supplemental relief requested, State's Resp. at 1, and the Secretary of State has repeatedly expressed her desire for every vote to be counted, Secretary's Resp. at 1-2.

Finally, the public interest will be served, rather than disserved, by an injunction. For our citizens living abroad, and for uniformed service members, "voting by absentee ballot may be the only practical means to exercise" their right to vote. Bush v. Hillsborough Cnty. Canvassing Bd., 123 F. Supp. 2d 1305, 1307 (N.D. Fla. 2000). "Thus, ensuring that these voters, many of whom risk their lives at the request of their government, have the opportunity to vote is certainly in the public interest." Alabama, 857 F. Supp. 2d at 1242; see also Doe v. Walker, 746 F. Supp. 2d 667, 670 (D. Md. 2010) (Noting that the UOCAVA was amended "in response to the widespread disenfranchisement of absent uniformed services and overseas voters during the November 2008 general elections.").

2.

The court also concludes that ordering the defendants to count the contested votes is both necessary to carry out the provisions of the UOCAVA, and no broader than necessary to provide complete relief to the plaintiff. The purpose of § 20302(a)(8)(A) is "to allow absent uniformed service voters and overseas voters enough time to vote in an election for Federal office." 52 U.S.C.A. § 20302(g)(1)(A). Indeed, the United States specifically stated that it was "bringing this enforcement action to ensure that West Virginia's [UOCAVA voters

would] have sufficient opportunity . . . to receive, mark and return their absentee ballots[.]” Compl. ¶ 2. To achieve that goal, the plaintiff prayed for an injunction ordering the defendants to “take such steps as are necessary to ensure that affected UOCAVA voters in State Delegate District 35 have sufficient opportunity . . . to receive, mark, and return their ballots.” See Compl. at Prayer of Relief.

In the usual case, that relief might well have been provided by simply extending the state-law ballot receipt deadline, as the parties agreed to do here. See, e.g., Alabama, 857 F. Supp. 2d at 1240-42; see also United States v. Cunningham, No. 08-709, 2009 WL 3350028, at *10 n.3 (E.D. Va. Oct. 15, 2009) (collecting nine additional cases authorizing deadline extensions ranging in length from three business days to fourteen days.). Indeed, at an earlier stage in this litigation, when little was known about the content of the defendants’ communications with the UOCAVA voters in the 35th House District, it appeared that remedy may suffice in this case as well. Order herein of Nov. 18, 2014, denying preliminary injunction. It is now clear, however, that the ongoing uncertainty regarding the validity of the original ballots deprived the four affected UOCAVA voters of sufficient time to vote in the November 4, 2014 election.

As discussed above, the UOCAVA voters in the 35th House District received conflicting information about their obligation to vote a corrected ballot. The October 1, 2014 mailing asked voters to return both ballots, but the instructions included with the corrected ballots on October 3, 2014 advised voters that it was a violation of State law to vote more than one ballot in any election. The effect of these conflicting messages is not purely theoretical: Voter A and Voter B specifically stated that they shredded their corrected ballots because they had already returned their original ballots, and were afraid to return two ballots. Although Secretary Tennant's office attempted to inform Voter A and Voter B on October 14, 2014 that it was "not certain that the first (pre-correction) ballot w[ould] be counted," no UOCAVA voter in the 35th House District was told definitively of the need to return a corrected ballot until November 3, 2014, the night before Election Day. In effect, voters who had not yet done so were left with one day to mark and return their corrected ballot -- by any measure, that does not constitute the meaningful opportunity to cast a ballot that § 20302(a)(8)(A) seeks to ensure.

III.

The defendants violated § 20302(a)(8)(A) of the UOCAVA by failing to transmit valid absentee ballots to voters in the 35th House District forty-five days before the November 4, 2014 election. Although they agreed to extend the ballot receipt deadline, doing so was not sufficient to provide the plaintiff with complete relief in light of the uncertainty concerning the validity of the original ballots throughout the month of October. Absent further injunctive relief, four voters who returned an original ballot will be disenfranchised.

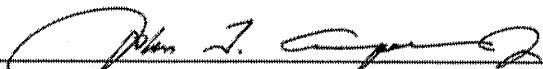
The court is not unmindful that ordering the relief requested by the plaintiff will require the defendants to count votes that Secretary Tennant believes are invalid under State law. But, as noted, the Attorney General is empowered to seek (and so the courts presumably are empowered to grant) "injunctive relief as may be necessary to carry out" the UOCAVA's requirements. See 52 U.S.C.A. § 20307(a). Those federal-law requirements are supreme, U.S. Const. art. VI, cl. 2, and though the State retains an important interest in the orderly conduct of its elections, "deference to state decision-making does not require the court to sit by idly and watch violations of the law persist. In some cases, and this is one,

if federally-guaranteed voting rights are to be protected, the court must act." Alabama, 857 F. Supp. 2d at 1242 (internal quotation marks and citation omitted). Here, the confusion caused by the issuance of the corrected ballots and the ensuing uncertainty about the validity of the original ballots deprived UOCAVA voters in the 35th House District of a meaningful opportunity to receive, mark, and return a ballot in the November 4, 2014 election. For the small number of those voters who expressed their intent to vote on an original ballot, but failed to return a corrected ballot, counting the original ballot provides the only meaningful relief available.

Accordingly, it is ORDERED that the defendants be, and they hereby are, directed to take such steps as are necessary to ensure that: (1) the votes in the November 4, 2014 election for United States Senate and United States House of Representatives on otherwise conforming original ballots cast by the four UOCAVA voters in the 35th House District who did not return a corrected ballot are counted; and (2) the results in those two races are amended to reflect the inclusion of those votes. It is further ORDERED that the defendants be, and they hereby are, directed to notify the court and counsel for the United States within forty days of the entry of this order that those votes in those two races have been counted.

The Clerk is requested to transmit a copy of this order to all counsel of record.

DATED: December 22, 2014



John T. Copenhaver, Jr.
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No. 2:14-27456

THE STATE OF WEST VIRGINIA
and NATALIE E. TENNANT,
Secretary of State of West Virginia,
in her official capacity,

Defendants.

JUDGMENT ORDER

In accordance with the memorandum opinion and order entered this day in the above-styled civil action, it is ORDERED and ADJUDGED that the plaintiff be, and it hereby is, granted the injunctive relief further specified herein and that judgment be, and it hereby is, entered in the plaintiff's favor.

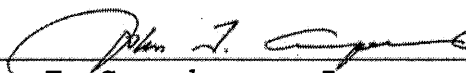
Specifically, it is further ORDERED and ADJUDGED as follows:

1. That the defendants, the State of West Virginia and the Secretary of State of West Virginia, be, and they hereby are, directed to take such steps as are necessary to ensure:

- a. That the votes in the November 4, 2014 election for United States Senate and United States House of Representatives on otherwise conforming original ballots cast by the four UOCAVA voters in the 35th House of Delegates District who did not return a corrected ballot are counted; and
 - b. That the results in those two races are amended to reflect the inclusion of those votes.
2. That the defendants be, and they hereby are, directed to notify the court and counsel for the United States within forty days of the entry of this order that those votes in those two races have been counted.
 3. That this action be, and it hereby is, dismissed and stricken from the docket, without prejudice to the plaintiff petitioning this court within sixty days of the entry of this order for further relief as may be necessary to effectuate the terms of this Judgment.

The Clerk is directed to transmit a copy of this Judgment to all counsel of record and any unrepresented parties.

ENTER: December 22, 2014



John T. Copenhaver, Jr.
United States District Judge

State of Alabama

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-11298

D.C. Docket No. 2:12-cv-00179-MHT-WC

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

STATE OF ALABAMA,
SECRETARY, STATE OF ALABAMA,

Defendants - Appellants.

Appeal from the United States District Court
for the Middle District of Alabama

(February 12, 2015)

Before MARCUS, JILL PRYOR and EBEL,* Circuit Judges.

MARCUS, Circuit Judge:

* Honorable David M. Ebel, United States Circuit Judge for the Tenth Circuit, sitting by designation.

In our nation's recent history, active military personnel and their families have faced severe difficulties exercising their fundamental right to vote. For affected service members, the decision to serve their country was the very act that frequently deprived them of a voice in selecting its government. Congress responded to this real problem by passing the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), a comprehensive series of requirements aimed at ending the widespread disenfranchisement of military voters stationed overseas. The statute includes a variety of measures that the states are required to adopt in order to accommodate military voters when they administer federal elections. By passing UOCAVA, and later by strengthening its protections, Congress unequivocally committed to eliminating procedural roadblocks, which historically prevented thousands of service members from sharing in the most basic of democratic rights.

Today, we are called upon to interpret a single provision in UOCAVA's general scheme. The parties in this case disagree about the meaning and scope of Title 52 U.S.C. § 20302(a)(8)(A)'s requirement that, when a qualifying military or overseas voter requests an absentee ballot for a federal election, a state must transmit a ballot to that voter forty-five days before the federal election. Neither this Court, nor any of our sister circuits, have opined on the scope of Congress's instruction. The United States commenced this suit against Alabama in the United

States District Court for the Middle District of Alabama, seeking to enjoin the State from holding federal runoff elections forty-two days after federal primary elections. The United States argued that the Alabama schedule violated UOCAVA's mandate and threatened to deprive military voters of the time they needed to receive and return their absentee ballots during runoff elections. The district court agreed, and after thorough review, we affirm.

The obligation that Congress has placed on the states is unambiguous: they must transmit absentee ballots to service members who validly request them forty-five days before "an election for Federal office." § 20302(a)(8)(A). Various other elements of § 20302(a)(8)(A) and of the surrounding sections of the statute confirm our understanding. As we explain in detail, Congress knew how to limit the scope of a provision so that it applied only during certain elections. Similarly, it knew how to create explicit exceptions to general rules, and indeed created an undue hardship exception to the forty-five day transmission timeline.

§ 20302(a)(8)(A), (g). But by choosing not to use these tools, which it otherwise wielded when drafting this statute, Congress gave us a clear indication that each state must comply with the forty-five day transmission requirement for any federal election, including a runoff election, for which it has not met the elements of undue hardship.

Alabama largely accepts these observations, but it urges us to hold that another UOCAVA provision, § 20302(a)(9), sets up an alternative rule for federal runoff elections. The State submits that § 20302(a)(9) directs the states to “establish a written plan that provides absentee 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.” *Id.* (emphasis added). It urges us to read this language as allowing each state to determine how much time would be “sufficient” for its UOCAVA voters to return their ballots during runoff elections. We cannot agree. When we look to the text of § 20302(a)(9), we find that it directs states only to “establish a written plan” in preparation for runoff elections, and makes no claim that it abrogates the mandatory forty-five day transmission timeline. *Id.* (emphasis added). In light of the plain language of this substantive command -- and Congress’s clear intent to prioritize the empowerment of military voters through clear and accessible absentee voting procedures -- we conclude that § 20302(a)(9) does not alter our interpretation. We, therefore, hold that the State must transmit validly requested absentee ballots to eligible UOCAVA voters forty-five days before each federal election, whether that election is primary, general, special, or runoff.

I.

A.

The Uniformed and Overseas Citizens Absentee Voting Act provides generally that states shall “permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office” and “establish procedures for transmitting [absentee ballots] by mail and electronically” to these voters before “general, special, primary, and runoff elections for Federal office.”¹ 52 U.S.C. § 20302(a)(1), (a)(7). Beyond its baseline requirements, the statute also requires that states extend additional protections to the UOCAVA absentee voting process that they might not extend to other absentee voters as a matter of state law. See, e.g., § 20302(a)(2) (requiring that states accept all UOCAVA registration forms and ballot requests received at least thirty days before any election);

¹ UOCAVA defines “absent uniformed services voter” to include: (1) “a member of a uniformed service on active duty who, by reason of such active duty, is absent from the place of residence where the member is otherwise qualified to vote”; (2) “a member of the merchant marine who, by reason of service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote”; and (3) “a spouse or dependent of a [member of a uniformed service or the merchant marine] who, by reason of the active duty or service of the member, is absent from the place of residence where the spouse or dependent is otherwise qualified to vote.” 52 U.S.C. § 20310(1). It defines “overseas voter” to include: (1) “an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved”; (2) “a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States”; and (3) “a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.” § 20310(5). For the sake of simplicity, we refer to these voters cumulatively as “UOCAVA voters.”

§ 20302(a)(3) (requiring that states allow UOCAVA voters to use federal write-in ballots); § 20302(i) (prohibiting states from enforcing requirements regarding notarization, paper type, or envelope type).

At the heart of this case is one of these special protections afforded to UOCAVA voters. Section 20302(a)(8) requires that states “transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter . . . in the case in which the request is received at least 45 days before an election for Federal office, not later than 45 days before the election.” In short, when a qualifying UOCAVA voter requests an absentee ballot from the state at least forty-five days before “an election for Federal office,” the state is required to transmit a ballot to the voter forty-five days in advance of that election. See id.

The text of § 20302(a)(8) also acknowledges that a later provision within UOCAVA enumerates circumstances in which the forty-five day transmission requirement does not apply. Subsection (g), designated in the statute as the “[h]ardship exemption,” provides that a state that submits a detailed proposal ninety days before a particular federal election may receive from the presidential designee² a waiver of the forty-five day transmission requirement for that election.

§ 20302(g). A state’s waiver application must explain the hardship preventing the

² The President selected the Secretary of Defense as the UOCAVA presidential designee by Executive Order. Exec. Order No. 12,642, 53 Fed. Reg. 21,975 (June 8, 1988), reprinted as amended in 52 U.S.C. § 20301. The Secretary administers its responsibilities through The Federal Voting Assistance Program (“FVAP”). See Federal Voting Assistance Program (FVAP), 32 C.F.R. § 233 (2014).

state from complying with the forty-five day rule and propose a substitute timeline specifying how many days before the election UOCAVA voters will receive their ballots. § 20302(g)(1)(B)-(C). It must also articulate a “comprehensive plan to ensure that” UOCAVA voters receive and are able to submit their ballots in time for the state to count their votes. § 20302(g)(1)(D). The plan must detail “the steps the State will undertake to ensure that [UOCAVA] voters have time to receive, mark, and submit their ballots in time,” and must include the state’s rationale for asserting that its alternate plan will be an adequate substitute for the forty-five day timeline, including underlying factual information. Id. A state can obtain a waiver only if it has shown that it faces an “undue hardship” based on one of the following conditions: (1) “[t]he State’s primary election date prohibits the State from complying”; (2) “[t]he State has suffered a delay in generating ballots due to a legal contest”; or (3) “[t]he State Constitution prohibits the State from complying.” § 20302(g)(2)(B).

Also relevant to the resolution of this case are several requirements found within the statute that are directed at particular types of federal elections. By their very terms, they must be implemented only with respect to certain elections. Thus, for example, for general elections, UOCAVA directs the states to “permit [UOCAVA] voters to use Federal write-in absentee ballots,” § 20302(a)(3), and “submit a report to the Election Assistance Commission” detailing the “combined

number of absentee ballots transmitted to [UOCAVA] voters for the election and the combined number of such ballots which were returned,” § 20302(c). Of particular importance here is the requirement imposed exclusively on runoff elections. § 20302(a)(9). Subsection (a)(9) requires that “if the State declares or otherwise holds a runoff election for Federal office,” it must “establish a written plan that provides absentee ballots are made available to [UOCAVA] voters in [a] manner that gives them sufficient time to vote in the runoff election.” Id.

B.

The United States initiated this suit against Alabama³ alleging that the State’s primary election scheme was incompatible with its requirements under UOCAVA. Under Alabama law, runoff elections are required if no candidate in a primary election receives a majority of the votes. Ala. Code § 17-13-18. The dates are set by statute at forty-two days after the relevant primary election. See id. This system prevents Alabama from sending absentee ballots to UOCAVA voters forty-five days before runoff elections.

Alabama argues that it need not comply with the forty-five day rule in advance of federal runoff elections. According to the State, § 20302(a)(9) demonstrates that states need not transmit ballots forty-five days before runoff

³ Shortly thereafter, the government filed a similar suit against the state of Georgia. See United States v. Georgia, 952 F. Supp. 2d 1318 (N.D. Ga. 2014), argued, No. 13-14065 (11th Cir. June 13, 2014).

elections. Alabama contends that the phrase “sufficient time to vote in the runoff election” creates an alternate timeline for runoff elections, allowing the State to decide how much time UOCAVA voters need to receive and submit their ballots. See id.

The district court disagreed and granted the federal government’s motion for final summary judgment. United States v. Alabama, 998 F. Supp. 2d 1283 (M.D. Ala. 2014). The court based its decision primarily on the plain text of the two provisions at issue. First, it found that the forty-five day transmission requirement seemed by its plain language to apply during all federal elections for which a state did not secure an undue hardship waiver. Id. at 1288-89. Moreover, it observed that the terms of the written plan requirement did not expressly alter the requirements of § 20302(a)(8)(A). Id. at 1291. The court concluded that, rather than creating a discretionary exception to the forty-five day transmission requirement, “subsection (a)(9) merely reflects that Congress wisely saw the need to provide an additional remedy when it comes to runoffs: to require States to develop a written plan that would help to protect further against UOCAVA violations that will more likely occur under the time constraints of a runoff election.” Id. at 1292.

The State timely appealed.

II.

We review a district court's grant of summary judgment de novo. Durr v. Shinseki, 638 F.3d 1342, 1346 (11th Cir. 2011). A district court may grant summary judgment when all "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Stewart v. Booker T. Washington Ins., 232 F.3d 844, 848 (11th Cir. 2000) (quotation omitted). "In assessing whether there is any 'genuine issue' for trial, the court 'must view all the evidence and all factual inferences reasonably drawn from the evidence in the light most favorable to the nonmoving party.'" Id. (quoting Stewart v. Happy Herman's Cheshire Bridge, Inc., 117 F.3d 1278, 1285 (11th Cir. 1997)). We also review questions of law, including statutory interpretation questions, de novo. Silva-Hernandez v. U.S. Bureau of Citizenship & Immigration Servs., 701 F.3d 356, 361 (11th Cir. 2012); Commodity Futures Trading Comm'n v. Levy, 541 F.3d 1102, 1110 (11th Cir. 2008).

A.

In conducting our analysis of § 20302(a)(8)(A), we find three elements of the statutory text to be particularly instructive. First, the plain language of the provision strongly suggests that it applies before any federal election. Second,

Congress's demonstrated ability to limit a provision, so that it applies only in a subset of elections, convinces us that it could easily have cabined the scope of the forty-five day transmission requirement if that were its intent. Lastly, Congress's clear use of an express exemption within § 20302(a)(8)(A) tells us that, if it had sought to remove runoff elections from the provision's scope, it would have done so directly. We discuss each in turn.

As “in any statutory construction case,” we begin with the ordinary meaning of the text, Sebelius v. Cloer, 133 S. Ct. 1886, 1893 (2013), and assume that Congress intended each word to have its ordinary meaning. Consol. Bank, N.A., Hialeah, Fla. v. U.S. Dep't of Treasury, 118 F.3d 1461, 1463 (11th Cir. 1997).

“Our ‘inquiry ceases [in a statutory construction case] if the statutory language is unambiguous and the statutory scheme is coherent and consistent.’” Cloer, 133 S. Ct. at 1895 (alteration in original) (quoting Barnhart v. Sigmon Coal Co., 534 U.S. 438, 450 (2002)).

Here, the directive of § 20302(a)(8)(A) is clear. The forty-five day transmission provision mandates that states “transmit” absentee ballots to UOCAVA voters forty-five days before “an election for Federal office.” § 20302(a)(8)(A). The plain meaning of the term “an election” is “any election.” In common terms, when “a” or “an” is followed by a restrictive clause or modifier, this typically signals that the article is being used as a synonym for either “any” or

“one.” See Webster’s Third New Int’l Dictionary 1 (2002) (explaining that the indefinite article means “any” or “each” when used with a restrictive modifier, and that it may be used to indicate one “example of (a named class)”); see also Black’s Law Dictionary 1 (6th ed. 1990) (noting that the word “an” commonly means “one” or “any”). In this context, the more restrictive meaning of the indefinite article (“one”) makes little sense: we presume Congress did not pass the statute in order to affect transmission of ballots to UOCAVA voters during one, unspecified election within the class of federal elections. See Consol. Bank, 118 F.3d at 1463-64 (“We are required to look beyond the plain language of the statute . . . when absurd results would ensue from adopting the plain language interpretation.”). And in fact, Alabama concedes this point, writing that, if § 20302(a)(8)(A) is “all there is” on the subject of how long states have to send ballots to UOCAVA voters, then by its ordinary meaning, § 20302(a)(8)(A) “would govern federal runoff elections.”

Notably, the phrase “an election” is followed by the qualifier “for Federal office.” UOCAVA defines precisely which elections are elections for “Federal office” -- namely those elections for “the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.” § 20310(3). Absent another statutory definition narrowing the term election, we read the phrase “an election for Federal office” to refer to all elections

for “the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress” -- without distinction among primary, general, special, and runoff elections. See id. Similarly, the statute’s most basic requirements apply broadly and without distinguishing between primary, general, special, or runoff elections. Thus, by example, § 20302(a)(1) provides that “[e]ach state shall . . . permit [UOCAVA] voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office,” and § 20302(a)(7) requires that states “establish procedures for transmitting [absentee ballots] by mail and electronically” to UOCAVA voters before “general, special, primary, and runoff elections for Federal office.” These provisions also suggest that a state’s core UOCAVA obligations are in full force during each federal election, regardless of its posture in the election calendar. Thus, we read the forty-five day transmission requirement to be clear by its own terms.

Binding precedent from this Circuit affirms our approach to analyzing Congress’s word choice. We have repeatedly found in prior cases that an indefinite article was purposefully used as a synonym for the word “any,” determining that the context of a statute required us to read “a” or “an” to mean “any” rather than “one.” Cnty. State Bank v. Strong, 651 F.3d 1241, 1256 (11th Cir. 2011) (observing that “the indefinite article ‘a’ suggests the court may

consider any possible suit”); Mixon v. One Newco, Inc., 863 F.2d 846, 850 (11th Cir. 1989) (holding that the legislature’s use of the term “a period of seven years” as opposed to “the period” refers to any seven-year period, not the “seven-year period immediately preceding” (emphasis omitted)); Comm’r of Internal Revenue v. Kelley, 293 F.2d 904, 911-12 (5th Cir. 1961) (“The weakness in the Commissioner’s argument is the assumption that there can be only one substantial part of a whole. . . . [The statute] requires only that ‘a substantial part’ be realized. The indefinite article ‘a’ says in plain language that there may be two or more substantial parts.”);⁴ see also Lee v. Weisman, 505 U.S. 577, 614 n.2 (1992) (Souter, J., concurring) (“[T]he indefinite article before the word ‘establishment’ [in the First Amendment] is better seen as evidence that the Clause forbids any kind of establishment . . .”).

We also find compelling in this analysis that Congress evinced the clear ability to circumscribe the scope of a provision when it chose to do so. In sharp contrast to § 20302(a)(8)(A)’s broad language, many of the surrounding provisions in UOCAVA are expressly limited. These provisions serve as persuasive evidence that Congress knew how to limit the scope of a provision to foreclose its operation during certain elections but chose not to do so when framing the forty-five day transmission requirement. As a general rule, we have explained that when

⁴ In Bonner v. City of Prichard, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc), we adopted as binding precedent all Fifth Circuit decisions issued before October 1, 1981.

“Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely” in its exclusion. CBS Inc. v. PrimeTime 24 Joint Venture, 245 F.3d 1217, 1225-26 (11th Cir. 2001) (quoting Russello v. United States, 464 U.S. 16, 23 (1983)); accord, Pugliese v. Pukka Dev., Inc., 550 F.3d 1299, 1303 (11th Cir. 2008). Because we find ample evidence in UOCAVA of “Congress’ clear ability to modify the term” election “to indicate the type thereof,” we conclude that its failure to include qualifying language in § 20302(a)(8)(A) “indicates that it had no intention to so limit the term” election in the forty-five day transmission requirement. Cf. Consol. Bank, 118 F.3d at 1465.

Thus, Congress required that states allow UOCAVA voters to vote using “Federal write-in absentee ballots,” but only in “general elections for Federal Office.” § 20302(a)(3) (emphasis added). Similarly, Congress included a requirement that states report on the number of ballots sent to and returned by UOCAVA voters, and specified that the requirement applies only after “regularly scheduled general election[s] for Federal office.” § 20302(c) (emphasis added). Finally, Congress decided that a state may obtain an undue hardship waiver if the state’s primary election date prevents it from complying with the forty-five day transmission rule. § 20302(g)(2)(B) (emphasis added). These election-specific provisions each suggest that Congress knew how to limit the scope of a UOCAVA

requirement, and lead us to the conclusion that its decision to use broad and inclusive language in § 20302(a)(8)(A) was intentional.

One additional element of the text counsels our conclusion. As we see it, Congress demonstrated its ability to create specific exceptions to otherwise general prescriptions, but chose not to draft such a carve-out for runoff elections. Indeed, Congress explicitly designated one exemption to § 20302(a)(8)(A)'s mandate, providing that the requirement is in force "except as provided in subsection (g)." § 20302(a)(8)(A). If Congress also intended to create a runoff exception, we would have expected that it employ the tools at its disposal -- such as direct language or a cross reference -- to articulate this intent. However, § 20302(a)(8)(A) by its own terms acknowledges only one exception to its clear command. Specifically, it provides that states must comply with the forty-five day transmission requirement whenever they are administering "an election for Federal office" unless they meet the requirements set out "in subsection (g)." *Id.* Section 20302(g) in turn explains that, if a state can demonstrate that it would face "undue hardship" if forced to meet the forty-five day transmission deadline, § 20302(g)(2)(B), it may receive a waiver for that election and that election only, § 20302(g)(3)-(4). A state's ability to obtain a waiver, however, is expressly contingent on both a showing of hardship and a proposal detailing an alternate

timeline which still gives UOCAVA voters “sufficient time to vote as a substitute for the requirements” set out in § 20302(a)(8)(A). § 20302(g)(1).

Thus, Congress has explicitly enumerated a discrete exception to a general rule, and we will not imply additional exceptions absent a clear direction to the contrary. Andrus v. Glover Constr. Co., 446 U.S. 608, 616-17 (1980); see also United States v. Brockamp, 519 U.S. 347, 352 (1997) (finding that attributes of the statute, including its “explicit listing of exceptions . . . indicate to us that Congress did not intend courts to read other unmentioned, open-ended . . . exceptions into the statute that it wrote”). Indeed, in order for us to give the most natural meaning to Congress’s direction that states transmit absentee ballots to UOCAVA voters “at least 45 days before an election for Federal office” “except as provided in subsection (g),” § 20302(a)(8)(A), we must conclude that “by explicitly including a . . . limited” hardship exemption, Congress “implicitly excluded” all other possible exceptions. Cf. TRW Inc. v. Andrews, 534 U.S. 19, 28 (2001). Here, Congress easily could have worded the statute to require forty-five day ballot transmission “except as provided in subsections (a)(9) and (g)” if it had intended both clauses to constitute exceptions to the general rule. “We are not, however, authorized to revise statutory provisions” under the pretense of interpreting them, and accordingly are unwilling to read in a runoff exception to § 20302(a)(8)(A). In

re Hedrick, 524 F.3d 1175, 1187 (11th Cir.), amended on reh'g in part, 529 F.3d 1026 (11th Cir. 2008); accord. Pugliese, 550 F.3d at 1304.

As a final matter, despite the apparent clarity of § 20302(a)(8)(A), we remain mindful that “[s]tatutory construction is a ‘holistic endeavor.’” Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 60 (2004) (quoting United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 371 (1988)). The Supreme Court has instructed us to look to surrounding provisions when defining statutory terms, explaining that particular language is “often clarified by the remainder of the statutory scheme -- because the same terminology is used elsewhere in a context that makes its meaning [more] clear.” Timbers of Inwood Forest Assocs., 484 U.S. at 371. Where Congress has used “identical words . . . in different parts of the same act,” we presume that in each instance the phrase is “intended to have the same meaning.” See Sullivan v. Stroop, 496 U.S. 478, 484 (1990) (quoting Sorenson v. Sec’y of Treasury, 475 U.S. 851, 860 (1986)) (internal quotation marks omitted). Thus, we pause to consider whether other uses of the phrase “an election for Federal office” within UOCAVA shed light on our inquiry. Here, we need look no further than the other provisions defining the states’ obligations to find a clear cross-reference confirming that Congress intended the phrase “an election for Federal office” to be afforded its plain and broad meaning.

Subsection 20302(a)(7) requires that states “establish procedures for transmitting by mail and electronically blank absentee ballots to [UOCAVA] voters with respect to general, special, primary, and runoff elections for Federal office,” and directs that its mandate must be carried out “in accordance with subsection (f).” Each subsection within § 20302(f) elaborates on the specifics of § 20302(a)(7)’s general requirement, and thus, by virtue of the cross-reference, applies fully in “general, special, primary, and runoff elections for Federal office.” See § 20302(a)(7). Importantly, § 20302(f)(1)(A) requires states to “establish procedures” to transmit by mail or electronic mail, depending on an individual voter’s preference, “blank absentee ballots . . . to [UOCAVA] voters for an election for Federal office.” Because § 20302(a)(7) already establishes that this subsection applies to “general, special, primary, and runoff elections for Federal office,” there can be little question that “an election for federal office” as used in § 20302(f)(1)(A) encompasses all types of federal elections.

Quite simply, we find that both the content of § 20302(a)(8)(A) itself and inferences drawn from language found in surrounding UOCAVA provisions demonstrate that Congress intended the forty-five day transmission requirement to apply to any election for Federal office for which the state has not received an undue hardship waiver.

B.

Although we find the obligation in § 20302(a)(8)(A) to be unambiguous on its own terms, Alabama urges us to examine whether § 20302(a)(9) alters our analysis because it requires that, “if the State declares or otherwise holds a runoff election for Federal office, [the State shall] establish a written plan that provides absentee ballots are made available to [UOCAVA] voters in [a] manner that gives them sufficient time to vote in the runoff election.” After careful consideration, we conclude that it does not. If we read this subsection in accordance with its ordinary meaning, we are compelled to find that it governs the states’ establishment of a written plan, not the procedures or timing by which they transmit absentee ballots.

We begin with the language of the provision. Importantly, § 20302(a)(9) does not by its terms purport to (1) affect the substantive process by which states must transmit ballots, or (2) establish an exception to § 20302(a)(8)(A). Rather, this section sets out a simple requirement: states must establish a written plan detailing how they will transmit ballots in compliance with UOCAVA in the event of a runoff election. See § 20302(a)(9). Alabama can identify no language or cross-reference within § 20302(a)(9) suggesting it creates an exception to the forty-five day transmission requirement. Indeed, the differences in the actual commands in each sentence -- namely “transmit ballots” as opposed to “establish a plan” -- demonstrate that each provision places a different and specific requirement on the

states' administration of federal elections. See Nat'l Cable & Telecomms. Ass'n, Inc. v. Gulf Power Co., 534 U.S. 327, 335-36 (2002) (“It is true that specific statutory language should control more general language when there is a conflict between the two. Here, however, there is no conflict. The specific controls but only within its self-described scope.”); see also RadLAX Gateway Hotel, LLC v. Amalgamated Bank, 132 S. Ct. 2065, 2071 (2012) (noting that “[t]he general/specific canon is perhaps most frequently applied to statutes in which a general permission or prohibition is contradicted by a specific prohibition or permission” but that it may also be applied to avoid “the superfluity of a specific provision that is swallowed by the general one”).

Additionally, nothing in either provision creates an inherent conflict with the other; states can easily comply with both requirements by sending ballots to qualifying UOCAVA voters forty-five days before all elections and also establishing a written plan describing procedures to be used in runoff elections. While Alabama urges us to read § 20302(a)(9) as requiring states to transmit ballots in “sufficient time” for UOCAVA voters to cast their votes, we simply cannot draw that inference when the only active direction in the provision reads, “each state shall . . . establish a written plan.”

Moreover, although Alabama argues that there is “no . . . reason to have a written plan concerning UOCAVA compliance specific to the runoff election,” we

agree with the district courts that have considered this issue: Congress could reasonably have included § 20302(a)(9) within UOCAVA without any intention of altering the ballot transmission timeline for runoff elections. Georgia, 952 F. Supp. 2d at 1328; Alabama, 998 F. Supp. 2d at 1291-92. We have little trouble imagining that Congress believed the additional, preparatory step of writing a plan was necessary before runoff elections, given the unique “logistical complexities” that they entail. See Georgia, 952 F. Supp. 2d at 1328. After all, runoff elections are unscheduled, may occur infrequently, and arise on the heels of preparations for a substantially different election. Indeed, due to the condensed timeline and short notice that characterize runoff elections, it is entirely plausible that Congress created this extra requirement in hopes that states would be more likely to achieve compliance with UOCAVA’s requirements if they prepared in advance.

Nevertheless, the State advances two arguments that merit discussion. First, Alabama contends that this Court should look to the waiver provision, § 20302(g), for the proposition that when Congress used the phrase “sufficient time to vote” within UOCAVA, it intended to designate a time period for transmitting ballots that is (1) set by the state and (2) less than forty-five days. Alabama also argues that, if we read § 20302(a)(9) to require only preparing a plan to comply with the forty-five day transmission requirement, we have rendered the term “sufficient time to vote” superfluous. We address each in turn.

First, Alabama notes that § 20302(g) allows states to obtain an exemption from the forty-five day transmission requirement by demonstrating to the federal government that the state's alternative plan ensures absentee voters receive ballots in "sufficient time to vote." In other words, the phrase "sufficient time to vote," as it is used in the waiver provision, necessarily refers to a period of time that is less than forty-five days, because a state only needs a waiver of the forty-five day requirement when it seeks to implement a shorter timeline for transmitting ballots to UOCAVA voters. Next, Alabama points out that the written plan provision uses similar language. It requires that "if the state declares . . . a runoff election for Federal office" it must "establish a written plan that provides absentee ballots are made available to [UOCAVA] voters in [a] manner that gives them sufficient time to vote in the runoff election." § 20302(a)(9). Therefore, the State submits, we should interpret the phrase, "sufficient time to vote in the runoff election" in § 20302(a)(9) to similarly entail a discretionary time period which the State may set at less than forty-five days.

We do not deny that Congress could have been more precise in its word choices. Nevertheless, we find that essential differences between the waiver provision and the written plan provision foreclose Alabama's interpretation of § 20302(a)(9). The hardship exemption provides that "[i]f the chief State election official determines that the State is unable to meet the requirement under

subsection (a)(8)(A),” the state may obtain a waiver of the requirement if it establishes “a comprehensive plan” for transmitting ballots to UOCAVA voters, § 20302(g)(1)(D), that includes “why the plan provides [UOCAVA] voters sufficient time to vote as a substitute for the requirements under such subsection,” § 20302(g)(1)(D)(ii), and “the underlying factual information which explains how the plan provides such sufficient time to vote as a substitute for such requirements,” § 20302(g)(1)(D)(iii). Notably for our purposes, the waiver provision makes repeated reference to the fact that it serves as substitute for § 20302(a)(8)(A). By contrast, the written plan provision makes no similar claim.

Moreover, by the express terms of the waiver provision, the state must show that its plan provides “sufficient time to vote as a substitute for [such] requirements.” See § 20302(g)(1)(D)(ii), (iii). In other words, the substitute time and procedures that it proposes must themselves allow UOCAVA voters sufficient time to vote. A runoff plan is different from a waiver plan in this respect. A runoff plan must explain how a state will make ballots available to UOCAVA voters. We draw this conclusion from the fact that the plan need not establish that voters have sufficient time to vote, but that “ballots are made available . . . in [a] manner that gives [voters] sufficient time to vote in the runoff election.”

§ 20302(a)(9) (emphasis added); see also Webster’s Third New Int’l Dictionary 1376 (2002) (defining “manner” to mean “the mode or method in which something

is done or happens,” “a mode of procedure or way of acting,” and “way, mode, fashion”). Other references within UOCAVA to the manner in which ballots are transmitted confirm that this phrase refers to the type of procedures used in, rather than the time required for, ballot transmission. See, e.g., § 20302(i) (providing that states may not “refuse to accept and process any otherwise valid voter registration application or absentee ballot application . . . or marked absentee ballot submitted in any manner by [a UOCAVA] voter” on the basis of notarization requirements, paper restrictions, or envelope restrictions); § 20302(a)(8)(B) (providing that when a state receives a request for a ballot less than forty-five days before an election it should transmit the ballot “in a manner that expedites the transmission of such absentee ballot”).

We also observe that, although the phrase “sufficient time to vote” as it is used in § 20302(g) designates a period of less than forty-five days, the result is not simply that the states may choose whatever time period they believe to be suitable. Rather, states can only propose an alternate timeline, § 20302(g)(1)(C), that may be implemented only if approved by the Secretary of Defense, § 20302(g)(2). We have difficulty imagining that, having taken such care to establish a framework for federal approval of any ballot transmission of less than forty-five days under § 20302(g), Congress intended to implicitly exempt an entire class of elections from both compliance with the rule and all federal oversight simply because it used

the phrase “sufficient time to vote” in its requirement that states “establish a written plan” to guide their conduct during runoff elections. See § 20302(a)(9).

Alabama’s second argument -- that we ought not render the phrase “sufficient time to vote” in § 20302(a)(9) superfluous -- also requires serious discussion. We recognize that “a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.” TRW Inc., 534 U.S. at 31 (quoting Duncan v. Walker, 533 U.S. 167, 174 (2001)) (internal quotation marks omitted). And when we engage in statutory interpretation, “[i]t is our duty to give effect, if possible, to every clause and word of a statute.” United States v. Menasche, 348 U.S. 528, 538-39 (1955) (internal quotation marks and citation omitted). Here, Alabama argues that if states must in fact “establish a written plan that provides absentee ballots are made available to [UOCAVA] voters in [a] manner that gives them” forty-five days to vote, this interpretation renders Congress’s inclusion of the term “sufficient time to vote in the runoff election” a nullity.

We cannot agree. As we have explained, the requirement in § 20302(a)(8)(A) is broad, but it is not absolute. States need not transmit ballots forty-five days before an election if they apply for and are granted a waiver by the Secretary of Defense on the basis of undue hardship. § 20302(g). Congress could reasonably have used the phrase “sufficient time to vote in a runoff election” in

§ 20302(a)(8) in recognition of the fact that, while most states will be transmitting ballots to qualified voters forty-five days before a runoff election, some states could be operating on a federally approved timeline pursuant to a hardship waiver.

Moreover, to the extent Alabama argues that a written plan for runoff elections is superfluous unless the timeline is also different -- because states must already have procedures in place that facilitate forty-five day transmittal -- we reiterate that Congress could reasonably disagree with Alabama's assessment. As the district court explained, Congress could have determined that other elections are "logistically less demanding" than runoff elections, and accordingly imposed an additional requirement on the states to facilitate UOCAVA compliance during those elections. Alabama, 998 F. Supp. 2d at 1292 (emphasis omitted).

This makes sense in light of the factual circumstances giving rise to the forty-five day requirement and other UOCAVA provisions. Congress substantially changed the states' UOCAVA obligations in 2009 based on continued and pervasive disenfranchisement of eligible military and overseas voters. See 156 Cong. Rec. S4513-02 (daily ed. May 27, 2010) (statement of Sen. Schumer) (explaining that Congress relied on data suggesting that "of those overseas voters who wanted to vote but were unable to do so . . . 34 percent [] could not vote because of problems in the registration process" and "39 percent [] who requested an absentee ballot in 2008 received it from local election officials in the second

half of October or later[,] much too late for a ballot to be voted and mailed back in time to be counted on election day”). Thus, it could reasonably have worried about the states’ ability to comply with the new requirements during elections that can occur without notice and on an abbreviated timeline.⁵

In short, we find that Alabama’s arguments, while carefully considered and not without some textual support, cannot overcome the plain text of §§ 20302(a)(8)(A) and (a)(9). By its plain language, § 20302(a)(8)(A) requires that states submit ballots to UOCAVA voters forty-five days before an election, and § 20302(a)(9) requires that they establish a written plan to facilitate UOCAVA compliance if they hold runoff elections. Absent a conflict between the two provisions or a clear direction that § 20302(a)(9) serves as an exception to the forty-five day transmission requirement, we are unwilling to adopt Alabama’s interpretation of the written plan provision.

C.

Because the text of § 20302(a)(8)(A) is clear, “we need not resort to legislative history.” Harris v. Garner, 216 F.3d 970, 976 (11th Cir. 2000) (en banc); Merritt v. Dillard Paper Co., 120 F.3d 1181, 1185 (11th Cir. 1997) (“When

⁵ Additionally, the record in this case reflects that, until the United States filed suit against it, Alabama had difficulty complying with the statutory requirements even during general and primary elections. Alabama, 998 F. Supp. 2d at 1292 (“Alabama concedes that it has failed to meet the 45-day requirement . . . in each of the last three federal elections.”). The challenges of complying with UOCAVA even during regular elections support our conclusion that Congress could rationally have implemented extra protections during runoff elections.

the words of a statute are unambiguous, then, this first canon [of statutory construction] is also the last: judicial inquiry is complete.” (quoting Conn. Nat’l Bank v. Germain, 503 U.S. 249, 254 (1992)) (alteration in original) (internal quotation marks omitted). However, we find that Congressional records confirm our interpretation in an important respect. The parties have not cited, nor have we discovered, any intent on the part of Congress to carve out a runoff exception to the forty-five day transmission requirement, much less the “clearly expressed legislative intent to the contrary” that we would require in order to even consider overriding the plain language of the statutory provisions. See Consol. Bank, N.A., 118 F.3d at 1463 (quoting Gonzalez v. McNary, 980 F.2d 1418, 1420 (11th Cir. 1993)).

Congress passed UOCAVA in 1986 in response to “the problem of involuntary absentee voter disenfranchisement” among military voters. 132 Cong. Rec. S7183-04 (daily ed. June 10, 1986) (statement of Sen. Warner); see also Uniformed and Overseas Citizens Absentee Voting Act of 1986, Pub. L. No. 99-410 § 102, 100 Stat. 924. The House Report reflects that representatives were deeply concerned about the national failure to encourage military voting and ensure reliable processes allowing military votes to be counted. When the report was published, the Federal Voting Assistance Program estimated that problems with absentee voting procedures had prevented some 400,000 citizens from voting

in the most recent federal election. H.R. Rep. No. 99-795, at 10 (1986), reprinted in 1986 U.S.C.C.A.N. 2009, 2014. In particular, the Report documents: (1) that many military personnel did not know how to obtain a ballot; (2) that a significant number of those who were able to attain a ballot did not receive clear instructions on how it should be filled out; and (3) that ballots often arrived at military posts too late for voters to fulfill state law absentee voting requirements and return the ballots in time for them to be counted. Id. at 8-10. When these problems persisted, Congress amended UOCAVA in 2009, passing the Military and Overseas Voter Empowerment Act (“MOVE Act”). Pub L. No. 111-84, §§ 575-89, 123 Stat. 2190, 2319-35. With the MOVE Act, Congress added more stringent protections on the absentee voting process, including the three subsections most salient to our analysis: the forty-five day requirement, the hardship waiver, and the written plan provision. Id. § 579. Because the 2009 amendments enacted each of the relevant provisions, we look to the history of the MOVE Act as the final piece of our analysis.

When examining legislative history, this Court has expressed a preference for Conference Reports, according weight to their “status as ‘the final statement of terms agreed to by both houses.’” In re Burns, 887 F.2d 1541, 1549 (11th Cir. 1989) (quoting In re Timbers of Inwood Forest Assocs., Ltd., 793 F.2d 1380, 1399 n.33 (5th Cir. 1986), aff’d on reh’g, 808 F.2d 363 (5th Cir. 1987), aff’d sub nom.

Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365) (internal quotation marks omitted). Here, the Conference Report is of little use to us, as it simply restates the forty-five day transmission rule and the written plan requirement in substantially the same language. See H.R. Rep. No. 111-288, at 744 (2009) (Conf. Rep.).⁶ Notably, however, Congress did not use the Conference Report to include any language that would suggest that the requirement to establish a written plan should double as another exception to the forty-five day requirement.

Only one other piece of legislative history is available for the MOVE Act. On May 8, 2010, Senator Charles Schumer read background and drafting history for the MOVE Act on the floor of the Senate, before asking for unanimous consent to print a section-by-section analysis of the Act into the Congressional Record.

156 Cong. Rec. S4513-02 (daily ed. May 27, 2010) (statement of Sen. Schumer).

Senator Schumer's statements in the record receive limited weight in our analysis,

⁶ The Conference Report's commentary on the relevant sections of UOCAVA reads, in its entirety:

The Senate amendment contained a provision (sec. 586) that would amend section 102 of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) (42 U.S.C. 1973ff-1(a)(1)) to require States to transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter at least 45 days before an election for federal office unless the request is received less than 45 days before the election or a hardship exemption is approved by the Presidential designee responsible for federal functions under UOCAVA. The provision also amends section 102(a) of UOCAVA to require States holding a runoff election for federal office to establish a written plan that would provide that absentee 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.

H.R. Rep. No. 111-288, at 744 (2009) (Conf. Rep.).

both because “the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one,” Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc., 447 U.S. 102, 117 (1980) (quoting United States v. Price, 361 U.S. 304, 313 (1960)) (internal quotation marks omitted), and because “ordinarily even the contemporaneous remarks of a single legislator who sponsors a bill are not controlling in analyzing legislative history,” id. at 118. We mention the Congressional Record only to point out that it makes no mention of the written plan requirement for runoff elections, much less characterizes it as a vehicle for exempting states from compliance with the forty-five day transmission requirement.

We also find it useful for one additional, albeit limited, purpose. Alabama offered various policy arguments, both at oral argument and in its briefs, about the effect that complying with the forty-five day transmission requirement would have on voter turnout for runoff elections in the state. Essentially Alabama argues that if states must push their runoff elections back seven weeks to accommodate UOCAVA’s forty-five day transmission deadline, they will face significant voter attrition, not just for the relevant federal election, but also for any state election that requires a runoff. This argument is based on the fact that Alabama, not surprisingly, holds state and federal elections on the same day to increase voter turnout. The problem for Alabama is that this Court is not the proper forum in

which to raise these arguments. “We cannot override what we view as a clear policy judgment by Congress.” In re Gurwitch, 794 F.2d 584, 586 (11th Cir. 1986). “The role of this Court is to apply the statute as it is written -- even if we think some other approach might ‘accor[d] with good policy.’” Burrage v. United States, 134 S. Ct. 881, 892 (2014) (quoting Comm’r of Internal Revenue v. Lundy, 516 U.S. 235, 252 (1996)) (alteration in original) (quotation marks omitted). Here, Alabama has raised an important policy consideration and made a plausible showing that it might face a problematic decrease in voter turnout if it schedules its runoff elections seven weeks after its primary elections. But when we look to the Conference Report and the Congressional Record, we can find no indication that Congress prioritized, or even considered, Alabama’s concerns in its response to the problem of military disenfranchisement.

Ultimately, “[t]he very difficulty of these policy considerations, and Congress’ superior institutional competence to pursue this debate, suggest that legislative not judicial solutions are preferable.” Patsy v. Bd. of Regents of State of Fla., 457 U.S. 496, 513 (1982). Alabama may well be correct in its calculations regarding lost votes from ordinary voters as compared to gained UOCAVA votes. But Congress, not this Court, must be the branch of government to address these issues.

Accordingly, we AFFIRM the district court's grant of final summary judgment to the United States.

AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 14-11298-DD

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

STATE OF ALABAMA,
SECRETARY, STATE OF ALABAMA,

Defendants - Appellants.

Appeal from the United States District Court
for the Middle District of Alabama

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARCUS, JILL PRYOR and EBEL,* Circuit Judges

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:


UNITED STATES CIRCUIT JUDGE

*Honorable David M. Ebel, United States Circuit Judge for the Tenth Circuit, sitting by designation.

ORD-42

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO.
)	2:12cv179-MHT
)	(WO)
THE STATE OF ALABAMA and)	
JOHN H. MERRILL, Secretary)	
of State of Alabama, in)	
his official capacity,)	
)	
Defendants.)	

JUDGMENT

Before the court are the defendants' Rule 60 motion for relief from judgment and order, the United States' response thereto, and the defendants' unopposed, time-sensitive motion for entry of order. Upon consideration of the same, it is the ORDER, JUDGMENT, and DECREE of the court as follows:

(1) The defendants' unopposed motion for entry of order (doc. no. 163) is granted.

(2) The defendants' motion for relief from judgment and order (doc. no. 153) is granted as follows.

(a) Paragraph 5 of this court's February 11, 2014, judgment (doc. no. 121) is vacated.

(b) This court's March 4, 2014, consent order (doc. no. 124) is vacated.

(c) This court's March 14, 2014, consent order (doc. no. 127) is vacated.

(d) This court's May 4, 2015, order (doc. no. 152) is vacated.

(e) This court's holding that UOCAVA's 45-day advance-transmission deadline, 52 U.S.C. § 20302(a)(8), applies to federal runoff elections, which was in all respects affirmed by the Eleventh Circuit Court of Appeals in United States v. Alabama, 778 F.3d 926 (11th Cir. 2015), remains in full force and effect.

(f) Alabama may implement Act No. 2015-518 consistent with UOCAVA's 45-day advance-transmission deadline for federal runoff elections.

(g) On or before November 18, 2015, defendant Secretary of State shall notify this court as to whether three or more candidates have qualified with a single political party having ballot access in Alabama for a federal race other than the Presidency.

(h) In the event that three or more candidates qualify with a single party for a federal race on Alabama's ballot (other than the Presidency), the defendants and the United States shall promptly begin developing a plan regarding reporting requirements for the potential runoff election.

(i) The defendants and the United States shall notify the court of their plan regarding runoff reporting on or before December 9, 2015.

(j) Consistent with this court's prior remedial order (doc. no. 119), in the event that a federal special election is scheduled to be held later this year or next year, the defendants and the United

States will confer about the timing and content of reporting for the primary and general election, as well as for any potential runoff election. Reporting will be required.

(k) On or before November 4, 2015, the defendants and the United States shall notify the court of their agreement or their respective positions as to the United States' request for training and the filing of regulations with this court.

DONE, this the 5th day of October, 2015.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE

State of Georgia

[PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 13-14065

D.C. Docket No. 1:12-cv-02230-SCJ

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

STATE OF GEORGIA,
SECRETARY, STATE OF GEORGIA,

Defendants - Appellants.

Appeal from the United States District Court
for the Northern District of Georgia

Before JORDAN and BENAVIDES,* Circuit Judges, and BARTLE,** District
Judge.

* Honorable Fortunato P. Benavides, United States Circuit Judge for the Fifth Circuit,
sitting by designation.

** Honorable Harvey Bartle III, United States District Judge for the Eastern District of
Pennsylvania, sitting by designation.

JORDAN, Circuit Judge:

In 2009, in order to ensure that “absent uniformed service voters and overseas voters [have] enough time to vote in an election for Federal office[.]” 42 U.S.C. § 1973 ff-1(g)(1)(A), Congress passed the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2322 (2009), which amended the Uniformed and Overseas Citizen Absentee Voting Act of 1986, 42 U.S.C. §§ 1973ff. If a covered voter—i.e., an absent uniformed service voter or an overseas voter—requests an absentee ballot “at least 45 days before an election for Federal office,” UOCAVA now requires a state, absent a hardship waiver, to transmit the ballot to the voter “not later than 45 days before the election[.]” 42 U.S.C. § 1973ff-1(a)(8)(A).

In separate suits brought by the United States against Georgia and Alabama, district courts ruled that this 45-day transmittal requirement applies to runoff elections for federal office, and that the runoff election schemes in those two states—as they existed at the time—violated UOCAVA. The district courts therefore granted preliminary injunctive relief, summary judgment, and permanent injunctive relief in favor of the United States. *See United States v. Georgia*, 952 F. Supp. 2d 1318 (N.D. Ga. 2013); *United States v. Alabama*, 998 F. Supp. 2d 1283 (M.D. Ala. 2014). Both Georgia and Alabama appealed. For the reasons which

follow, we dismiss Georgia's appeal as moot.¹

In mid-January of 2014, after the district court had issued its ruling and after the briefs in this appeal were filed, the Georgia Legislature passed H.B. 310, which in relevant part amends Georgia's election calendar and voting procedures. Georgia Governor Nathan Deal signed H.B. 310 into law on January 21, 2014.

H.B. 310 amends § 21-2-501(a) of the Georgia Code by adding new subsections (a)(3) and (a)(5) so that Georgia now complies with the 45-day transmittal requirement set forth in subsection (a)(8)(A) of UOCAVA. Subsection (a)(3) of § 21-2-501 provides that "[i]n the case of a runoff from a general election for a federal office or a runoff from a special primary or special election for a federal office held in conjunction with a general election, the runoff shall be held on the Tuesday of the ninth week following such general election." Subsection (a)(5) of § 21-2-501 provides that "[i]n the case of a runoff from a special primary or special election for a federal office not held in conjunction with a general primary or general election, the runoff shall be held on the Tuesday of the ninth week following such special primary or special election." So, as things stand now under codified Georgia law, the state's election calendar and procedures satisfy

¹ A panel of this Court recently rejected Alabama's appeal on the merits. *See United States v. Alabama*, No. 14-11298, ___ F.3d ___, 2015 WL 570978 (11th Cir. Feb. 12, 2015) (holding that UOCAVA's 45-day transmittal requirement applies to runoff elections for federal office).

UOCAVA's 45-day transmittal requirement for ballots to covered voters in runoff elections for federal office.

Significantly, H.B. 310's changes are not limited to bringing Georgia law in line with UOCAVA's 45-day transmittal requirement. Other aspects of H.B. 310 change or amend the dates of general and special primary elections, the filing of notices of candidacy, the nomination of presidential electors, the conventions of political parties, the procedures for absentee voting and advance voting, and the filing of campaign contribution reports. *See* H.B. 310, §§ 1, 2, 3, 4, 5, & 9.

"If events that occur subsequent to the filing of a lawsuit or an appeal deprive the court of the ability to give the plaintiff or appellant meaningful relief then the case is moot and must be dismissed." *Troiano v. Supervisor of Elections*, 382 F.3d 1276, 1282 (11th Cir. 2004). The Supreme Court has ruled in a number of cases that the enactment of new legislation which repeals or materially amends the law being challenged—even if the change comes after the district court's judgment—renders the lawsuit and/or appeal moot and deprives the court of jurisdiction. *See e.g., Lewis v. Cont'l Bank Corp.*, 494 U.S. 472, 474 (1990); *Kremens v. Bartley*, 431 U.S. 119, 128 (1977); *Diffenderfer v. Cent. Baptist Church*, 404 U.S. 412, 415 (1972). There is one Supreme Court case, *City of Mesquite v. Aladdin's Castle*, 455 U.S. 283, 289 (1982), that reaches a different result, but we have characterized that decision as resting on the "substantial

likelihood that the offending policy w[ould] be reinstated if the suit [wa]s terminated.” *Troiano*, 382 F.3d at 1284. *See also Beta Upsilon Chi Upsilon Chapter at Univ. of Fla. v. Machen*, 586 F.3d 908, 917 (11th Cir. 2009) (describing *City of Mesquite* as a “case where the Court decided that a challenge to a city statute was not moot, because even though the city had repealed the statute, there was ‘no certainty’ that the city would not reenact the law and the city had announced its intention to reenact the offending statute if the Court dismissed the case”). *Cf. Ne. Fla. Chapter of Associated Gen. Contractors of Am. v. City of Jacksonville*, 508 U.S. 656, 662 (1993) (refusing to dismiss appeal challenging city’s set-aside ordinance because newly enacted ordinance continued to accord preferential treatment to certain groups).

The governing principle, as we have distilled it, is that “in the absence of evidence indicating that the government intends to return to its prior legislative scheme, repeal of an allegedly offensive statute moots legal challenges to the validity of that statute.” *Nat’l Adv. Co. v. City of Miami*, 402 F.3d 1329, 1334 (11th Cir. 2005). Given that H.B. 310 encompasses comprehensive electoral reforms, and is not merely a legislative fix for the violation of the 45-day UOCAVA transmittal requirement, we cannot conclude that the Georgia Legislature would go back to the old electoral system if this appeal were dismissed as moot. This is particularly so because, as a general matter, “voluntary cessation

by a government actor gives rise to a rebuttable presumption that the objectionable behavior will not recur.” *Atheists of Fla. Inc. v. City of Lakeland*, 713 F.3d 577, 594 (11th Cir. 2013).²

The appeal is dismissed as moot, and the judgment of the district court is vacated. We remand with instructions that the district court dismiss the complaint filed by the United States for lack of subject-matter jurisdiction. *See Coalition for the Abolition of Marijuana Prohibition v. City of Atlanta*, 219 F.3d 1301, 1309-10 (11th Cir. 2000) (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950)).

APPEAL DISMISSED AS MOOT.

² At oral argument, Georgia asserted that the enactment of H.B. 310 did not cause its appeal to be moot. In its subsequent supplemental letter brief, Georgia now says that everything is moot and represented that it will not return to the former electoral scheme. Although we are somewhat concerned by this change of position, our recent decision in *Alabama*, No. 14-11298—which rejects the interpretation of UOCAVA advanced by Alabama and Georgia—does not allow Georgia to revert to its old ways. We therefore take Georgia’s most recently articulated position as the governing one.

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

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.
	:	1:12-cv-2230-SCJ
v.	:	
	:	
THE STATE OF GEORGIA; and	:	
BRIAN P. KEMP, SECRETARY OF	:	
STATE OF GEORGIA, in his	:	
official capacity,	:	
	:	
Defendants.	:	

ORDER

The mandate of the United States Court of Appeals for the Eleventh Circuit having been read and considered (Doc. No. [59]), it is **ORDERED** and **ADJUDGED** that said mandate be, and it hereby is made, the judgment of this Court.

The Complaint filed by the United States of America against the State of Georgia to enforce the right of absent uniformed services voters and overseas voters to vote by absentee ballot in Georgia’s general, special, primary, and runoff elections for federal office pursuant to the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (“UOCAVA”), 42 U.S.C. §§ 1973ff *et seq.*, 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”) is hereby **DISMISSED** for lack of subject-matter

jurisdiction due to events occurring subsequent to the entry of this Court's judgment on July 11, 2013 in favor of the United States. Said events being the State of Georgia's enactment of comprehensive electoral reforms (H.B. 310) in January of 2014 and Governor Nathan Deal's signing of H.B. 310 into law on January 21, 2014. As stated by the Eleventh Circuit, "[s]o, as things stand now under codified Georgia law, the state's election calendar and procedures satisfy UOCAVA's 45-day transmittal requirement for ballots to covered voters in runoff elections for federal office." United States v. Georgia, No. 13-14065, ___ F.3d ___, 2015 WL 778091 (11th Cir. Feb. 24, 2015). Further, as H.B. 310 is comprehensive reform and "is not merely a legislative fix for the violation of the 45-day UOCAVA transmittal requirement," the Eleventh Circuit could not conclude that the Georgia Legislature would go back to its old electoral system – it is with such conclusion that nothing further remains for this Court's consideration. Id.

The Clerk is **DIRECTED** to close this civil action.

IT IS SO ORDERED, this 27th day of February, 2015.

s/Steve C. Jones
HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE

State of New York

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

STATE OF NEW YORK and THE NEW)
YORK STATE BOARD OF ELECTIONS,)

Defendants.)

Case No. 1:10-CV-1214 (GLS/RFT)

SUPPLEMENTAL REMEDIAL ORDER

WHEREAS the January 27, 2012 Order of this court granted a Permanent Injunction to the United States upon its application to bring the State of New York into compliance with 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 (MOVE) Act, Pub. L. No. 111-84, subtitle H, §§ 575-589, 123 Stat. 2190, 2318-235 (2009). The January 27, 2012 Order set the 2012 federal non-presidential primary date as June 26, 2012 and provided that in subsequent even-numbered years, New York's non-presidential federal primary date shall

be the fourth Tuesday of June, unless and until New York enacts legislation resetting the non-presidential federal primary for a date that complies fully with all UOCAVA requirements, and is approved by the court (Decretal Paragraphs "1" and "2");

WHEREAS by Order dated February 9, 2012, this court adopted a political calendar for the implementation of the 2012 federal non-presidential primary and general election, and such calendar was specific to 2012. (ECF Document No. 64, pp. 2-3, 5-6);

WHEREAS by Order dated December 12, 2013, this court adopted a political calendar for the implementation of the 2014 federal non-presidential primary and general election, and such calendar was specific to 2014. (ECF Document No. 85, pp 2-6);

WHEREAS as of this date the State of New York has not amended the New York State Election Law to change the date of the federal primary with respect to this court's Order of January 27, 2012 and until such action has occurred this application is necessary;

WHEREAS the instant application requests that the court supersede various sections of the Election Law as necessary to effectuate the January 27, 2012 Order of this court;

WHEREAS the parties to this action consent to the issuance of this Supplemental Remedial Order;

WHEREAS it is the judgment of this court that the enumerated sections of New York State law must be superseded to provide for a MOVE Act compliant election in New York for the year 2016, now therefore, it is hereby,

ORDERED that the following sections of New York State law be and hereby are superseded for the 2016 election of federal offices in New York:

Schedule of State Law Provisions Superseded for Compliance with MOVE Act

Section of Election Law	Subject	Description of Change
§ 1-106	Timeliness of filings related to federal offices	For the 2016 Federal Primary and General Elections, that all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the state board of elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service (as defined in CPLR §2103(b)(6) in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than one business day after the last day to file such certificates, petitions, objections or specifications.
§ 4-110	Date of certification of Primary Election ballot by New York State Board of Elections for candidates for federal office	from thirty-six to fifty-four days pre-Primary [May 5, 2016]

Section of Election Law	Subject	Description of Change
§ 4-114	Date of certification of ballot by county boards of elections for candidates for federal office	from thirty-five to fifty-three days pre-Primary or pre General Election [May 6, 2016]
§ 4-112 [1]	Date of certification of General Election ballot by New York State Board of Elections for candidates for federal office	from thirty-six to fifty-four days pre-General Election [September 15, 2016]
§ 6-158 [1]	Filing of designating petitions for Federal Primary	from the time period “between the tenth Monday to the ninth Thursday” to the time period “between the twelfth Monday to the eleventh Thursday” preceding the Federal Primary [April 11, 2016 - April 14, 2016]
§ 6-158 [4]	Filing of opportunity to ballot petitions for Federal Primary	from the eighth Thursday to the tenth Thursday preceding Federal Primary [April 21, 2016]
§ 6-158 [4]	Filing of opportunity to ballot petitions upon declination for Federal Primary	from the seventh to the ninth Thursday preceding Federal Primary [April 28, 2016]
§ 6-158 [6]	Last day to file certificate of nomination to fill vacancy in federal office pursuant to § 6-116	from seven to twenty-one days after Federal Primary [July 19, 2016]
§ 6-158 [9]	Filing dates for independent nominations for federal offices	from the time period “twelve weeks preceding through eleven weeks preceding” to the time period “fifteen weeks preceding through fourteen weeks preceding” the Federal Primary [July 26, 2016 – August 2, 2016]
§ 6-158 [11]	Last day to accept or decline independent nomination for federal office	from three days after the eleventh Tuesday to three days after the fourteenth Tuesday preceding the General Election, and from three days after the Primary to three days after the fourteenth Tuesday preceding the General Election [August 5, 2016]

Section of Election Law	Subject	Description of Change
§ 6-158 [12]	Last day to fill vacancy after declination of a federal independent nomination	from the eleventh to the fourteenth Tuesday preceding the General Election [August 8, 2016]
§ 10-108 [1] and § 11-204 [4]	Deadline to transmit Military and Special Federal absentee ballots for Federal Primary or General Election to voters with valid applications on file	from thirty-two days to forty-five days before Federal Primary or General Election for federal offices. [May 14, 2016 for Federal Primary] [September 24, 2016 for General Election]

ORDERED that nothing herein shall prohibit the State of New York from making statutory changes in its federal office election process to put New York in compliance with the MOVE Act, and that such changes, if made, may be implemented in 2016 upon the determination of this court that such changes render the 2016 election for federal offices MOVE Act compliant.

Date: October 29, 2015
Albany, New York


GARY L. SHARPE
United States District Court Judge

The following is a DRAFT Political Calendar for 2016 which includes the Congressional Primary (June 28th), the State & Local Primary (September 13th) and the General Election (November 8th). Portions of this Calendar are SUBJECT TO APPROVAL of the United States District Court for the Northern District of New York, and the Calendar is posted here for informational purposes only pending submission to the Court. Note also, portions of the Calendar could change as a result of future legislative enactment or court orders.

Summary of Changes:

The Federal MOVE Act requires military and special federal ballots to be sent out 45 days prior to an election for federal office. Here's a summary of the key calendar changes that ensure compliance.

Designating Petitions for Federal Office/Federal Primary Election:

- First date to circulate designating petitions for federal office is March 8, 2016.
- Dates to file designating petitions are April 11, 2016 to April 14, 2016.
 - Nominating petitions by independent bodies for federal office as those petition dates are altered by this plan.
 - First date to circulate independent nominating petitions for federal office is June 21, 2016.
 - Dates to file independent nominating petitions for federal office are July 26, 2016 to August 2, 2016.
 - Nominating petitions by independent bodies for state/local office are NOT altered by this plan.

Opportunity to Ballot Petitions for Federal Office/Federal Primary Election:

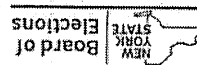
- First date to circulate OTB petitions for federal office is changed to March 29, 2016.
- Last date to file OTB petitions is changed to April 21, 2016.

To provide for the reduction in time to process designations and allow an administrative process for objections, and judicial review, NYS Election Law Section 1-106 should be superseded to require as part of this plan the following:

For the 2016 Federal Primary and General Elections, that all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the state board of elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service (as defined in CPLR §2103(b)(6)) in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than one business day after the last day to file such certificates, petitions, objections or specifications.

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**2016
POLITICAL CALENDAR
10/1/2015**



**Federal Primary Election
June 28
State/Local Primary Election
September 13
General Election
November 8**

This political calendar is a ready reference to the significant dates pertaining to elections to be held in this state. For complete information be sure to consult the State's election law and Regulations and provisions in effect on the date of publication and may be subject to change. Final confirmation should be obtained from your county board of elections or the State Board.

NEW YORK STATE
BOARD OF ELECTIONS
40 NORTH PEARL STREET - SUITE 5
ALBANY, NEW YORK 12207
(518) 474-6220
For TDD/TTY, call the NY State Relay 711
www.elections.ny.gov

PRIMARY ELECTION HOURS:
In Suffolk, Westchester, Rockland, Orange, Putnam and Erie, POLLS OPEN at 6 AM and CLOSE at 9 PM. In all other counties POLLS CLOSE at 9 PM.

GENERAL ELECTION HOURS:
All polls OPEN at 6 AM and CLOSE at 9 PM

FILING REQUIREMENTS - FEDERAL COURT ORDER
All candidates and parties of designation or nomination, certificates of designation or nomination for such designation, certificates of qualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and parties of designation or nomination shall be deemed timely filed and accepted for filing if sent by 5:00 p.m. on the business day immediately preceding the election. The filing shall be deemed timely filed and accepted for filing if sent by 5:00 p.m. on the business day immediately preceding the election. The filing shall be deemed timely filed and accepted for filing if sent by 5:00 p.m. on the business day immediately preceding the election.

SIGNATURE REQUIREMENTS TO BALLOT PETITIONS
5% of the enrolled voters of the political party in the political unit or the entire state (with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts) must sign the petition.

SIGNATURE REQUIREMENTS FOR FEDERAL NOMINATING PETITIONS
5% of the total number of voters, excluding blank and void, cast for the office of governor at the last gubernatorial election in the political unit, except that not more than 3,500 signatures shall be required on a petition for any office to be filed in any political subdivision outside the City of New York. For any office to be filed for by all voters of the entire state (with at least 200 from each of one-half of the congressional districts) 3,500 signatures are required.

FEDERAL ELECTION - ELECTION DATES

February 23	PARTY CALLS: Last day for State & County party chairs to file a statement of party positions to be filed at the Federal Primary Election. \$2-120(1)
March 8	Certification of offices to be filed at General Election. \$4-106(1)(2)
June 28 th	Federal Primary Election. Per Court Order

CERTIFICATION OF FEDERAL PRIMARY

May 5	Certification of Federal Primary ballot by State Board of Elections of designations filed in its office. \$4-110
May 6	Determination of candidates for Federal office by county boards. \$4-114
May 6	canvass of Federal Primary Election returns
July 7	Canvass of Federal Primary returns by counties. \$9-200(1)
July 13	Receipt of Federal Primary returns. \$9-200(1)
July 5	Verifiable Audit of Voting Systems \$9-211(1)
September 19	Deadline for vacancies to be filed at General Election. \$4-154(1)
November 8 th	General Election \$9-200(1)

CERTIFICATION OF FEDERAL GENERAL ELECTION

September 15	Certification of General Election ballot by State Board of Federal designations filed in its office. \$4-117(1)
September 16	Determination of Federal candidates and questions by county boards. \$4-114
October 18	Last day to file Writings for President. \$6-103

DESIGNATING PETITIONS FOR FEDERAL PRIMARY

March 8	First day for filing Federal designating petitions. \$4-134(1)
April 11	Dates for filing Federal designating petitions. \$4-134(1)
April 14	Dates for authorizing Federal designations. \$4-120(1), \$4-135(1)
April 18	Last day to accept or decline Federal designations. \$4-135(1)
April 18	Last day to accept or decline Federal designations. \$4-135(1)
April 22	Last day to fill a vacancy after a Federal declaration. \$4-135(1)
April 26	Last day to file authorization of substitution after declaration of a Federal designation. \$4-135(1)
March 29	First day for signing Federal OTB petitions. \$4-161
April 21	Last day to file Federal OTB petitions. \$4-158(1)
April 28	Last day to file the OTB petition if there has been a designation by a designated candidate. \$4-158(1)

PARTY NOMINATION OTHER THAN PRIMARY

March 8	Dates for holding state committee meetings to nominate candidates for Federal statewide office. \$6-104(6)
July 19	Last day for the certifiers of nomination to fill vacancies in Federal office created pursuant to § 6-116 & 6-156(6)
July 22	Last day to accept or decline a nomination for Federal office made based on § 6-116
July 25	Last day to file authorization of nomination for Federal office made based on § 6-116
July 26	Last day to fill a vacancy after a declaration for Federal office made based on § 6-116
July 27	Last day to file vacancy after declaration for Federal office made based on § 6-116
September 9	Last day for filing nominations of electors for president by a party committee. Per Chapter of the Laws of 2015

DEPARTMENT PETITIONS FOR FEDERAL OFFICE

June 21	First day for signing Federal independent nominating petitions. \$6-134(1)
July 26	Dates for filing Federal independent nominating petitions. \$6-134(1)
August 2	Last day to accept or decline Federal independent nomination. \$6-134(1)
August 8	Last day to file a vacancy after a declaration to any independent petition for Federal office. \$6-134(1)
July 1	Last day to declare either acceptance if nominee loses party primary. \$6-151(1)

FEDERAL ELECTION - VOTER REGISTRATION

VOTER REGISTRATION FOR FEDERAL PRIMARY

June 3	Mail Registration for Federal Primary: Last day to postmark application and last day it must be received by board of elections is June 8. \$5-219(3)
June 3	In person registration for Federal Primary: board of election to be eligible to vote in primary election. \$4-210, 5-211 & 5-212
June 8	Changes of address received by this date must be processed. \$5-208(3)
June 8	Changes of address received by this date must be processed. \$5-208(3)

VOTER REGISTRATION FOR GENERAL

October 14	Mail Registration: Last day to postmark application for general election and last day it must be received by board of elections is October 19. \$5-219(3)
October 14	In person registration: Last day application must be received by board of election to be eligible to vote in general election. If you are honorably discharged from the military or have become a naturalized citizen since October 14 th , you may register in person at the board of elections up until October 29 th . \$5-210, 5-211 & 5-212
October 19	Changes of address received by this date must be processed. \$5-208(3)
October 14	Changes of party enrollment: Last day to accept a change of enrollment. \$5-208(3)

ASSENTEE VOTING FOR FEDERAL PRIMARY

June 21	Last day to postmark application for Federal primary ballot. \$4-402(2)(a)
June 27	Last day to apply in person for Federal primary ballot. \$4-402(2)(a)
June 27	Last day to postmark Federal primary ballot. Must be received by the county board no later than 5 th PM. \$4-412(1)
June 28	Last day to deliver Federal primary ballot in person to county board. By close of polls on election day. \$4-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR FEDERAL PRIMARY

May 14	Date to transmit Military/Special Federal ballots for Federal primary. \$10-108(1) & 11-202(1)
June 3	Last day for a board of elections to receive application for Military/Special Federal ballot if not previously registered. \$10-108(1) & 11-202(1)
June 21	Last day for a board of elections to receive Military/Special Federal application if previously registered. \$10-108(1) & 11-202(1)
June 27	Last day to apply personally for Military/Special Federal ballot if previously registered. \$10-108(1) & 11-202(1)
June 27	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections is July 5. \$10-108(1) & 11-212

ASSENTEE VOTING FOR FEDERAL GENERAL

Nov. 1	Last day to postmark application or letter of application for general election ballot. \$4-402(2)(a)
Nov. 7	Last day to apply in person for general election ballot. \$4-402(2)(a)
Nov. 7	Last day to postmark ballot. Must be received by the county board no later than 5 th PM. \$4-412(1)
Nov. 15 th	Last day to deliver ballot in person to county board. By close of polls on election day. \$4-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR FEDERAL GENERAL

Sept. 24	Date to transmit Military/Special Federal general election ballots. \$10-108(1) & 11-202(1)
Oct. 14	Last day for a board of elections to receive application for Special Federal absentee ballot if not previously registered. \$11-202(1)
Oct. 28	Last day for a board of elections to receive application for Military absentee ballot if not previously registered. \$11-202(1)
Nov. 1	Last day for a board of elections to receive and previously registered. \$10-108(1) and previously registered. \$10-108(1)
Nov. 1	Last day for a board of elections to receive Special Federal absentee application, if previously registered. \$11-202(1)
Nov. 7	Last day to apply personally for Military/Special Federal ballot if previously registered. \$11-202(1)
Nov. 7	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections is Nov. 21. \$10-108(1) & 11-212

STATE/LOCAL ELECTION
ELECTION DATES

Sept. 13	State/Local Primary Election §8-100(1)(a)
May 24	PARTY CALLS: Last day for State & County party chairs to file a statement of party positions to be filled at the State Primary Election. §2-120(3)

CERTIFICATION OF STATE/LOCAL PRIMARY

Aug. 8	Certification of September state/local primary ballot by SBOE of designations filed in its office. §4-110
Aug. 9	Determination of candidates and questions; County Boards. §4-114

CANVASS OF STATE/LOCAL PRIMARY RESULTS

Sept. 22	Canvass of State/Local Primary Returns by County Board of Elections §9-200(1)
Sept. 28	Recanvass of State/Local Primary Returns. §9-208(1)
Sept. 20	Verifiable Audit of Voting Systems. §9-211(1)

Nov. 8	General Election §8-100(1)(c)
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CERTIFICATION OF STATE/LOCAL GENERAL ELECTION BALLOT

Oct. 3	Certification of general election ballot by SBOE of nominations filed in its office. §4-112(1)
Oct. 4	Determination of state/local candidates and questions by county boards. §4-114

CANVASS OF STATE/LOCAL GENERAL ELECTION RESULTS

Dec. 2	Canvass of General Election Results by County Board of Elections §9-214(1)
Nov. 23	Recanvass of General Results. §9-208(1)
Nov. 23	Verifiable Audit of Voting Systems. §9-211(1)
Dec. 12	State Board of Canvassers meet to certify General Election

** BECOMING A CANDIDATE **

DESIGNATING PETITIONS FOR STATE/LOCAL PRIMARY

June 7	First day for signing designating petitions for state/local offices. §6-134(4)
July 11- July 14	Dates for filing designating petitions for state/local offices. §6-158(1)
July 18	Last day to authorize designations for state/local offices. §6-120(3)
July 18	Last day to accept or decline designations for state/local offices. §6-158(2)
July 22	Last day to fill a vacancy after a declination for state/local office. §6-158(1)
July 26	Last day to file authorization of substitution after declination of a state/local designation. §6-120(3)

OPPORTUNITY TO BALLOT PETITIONS FOR STATE/LOCAL PRIMARY

June 28	First day for signing OTB petitions for state/local offices. §6-164
July 21	Last day to file OTB petitions for state/local offices §6-158(4)
July 28	Last day to file OTB petition if there has been a declination by a designated candidate for state/local offices. §6-158(4)

PARTY NOMINATION OTHER THAN PRIMARY

June 7	First day to hold a town caucus. §6-138(4)
Sept. 20	Last day for filing nominations made at a town or village caucus or by a party committee. §6-158(6)
Sept. 20	Last day to file certificates of nomination to fill vacancies created pursuant to §6-116 & §158(6)
Sept. 23	Last day to accept or decline a nomination for state/local office made based on §6-116
Sept. 26	Last day to file authorization of nomination made based on §6-116
Sept. 27	Last day to fill a vacancy after a declination made based on §6-116

INDEPENDENT PETITIONS FOR STATE/LOCAL OFFICES

July 12	First day for signing nominating petitions for state/local offices. §6-138(4)
Aug. 16- Aug. 23	Dates for filing independent nominating petitions for state/local office. §6-158(9)
Aug. 26	Last day to accept or decline nomination for state/local office. §6-158(11)
Aug. 29	Last day to fill a vacancy after a declination in state/local office. §6-158(12)
Sept. 16	Last day to decline after acceptance if nominee loses party primary. §6-158(11)

STATE/LOCAL ELECTION
JUDICIAL DISTRICT CONVENTIONS

Sept. 20 thru 26	Dates for holding Judicial conventions. §6-158(5)
Sept. 27	Last day to file certificates of nominations. §6-158(6)
Sept. 30	Last day to decline. §6-158(7)
Oct. 4	Last day to fill vacancy after a declination. §6-158(8)

Minutes of a convention must be filed within 72 hours of adjournment. §6-158(8)

SIGNATURE REQUIREMENTS FOR DESIGNATING AND OPPORTUNITY TO BALLOT PETITIONS FOR STATE/LOCAL OFFICES

5% of the enrolled voters of the political party in the political unit (excluding voters in inactive status) or the following, whichever is less:

For any office to be filled by all the voters of the entire state 15,000
(with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)

New York City	7,500
any county or borough of New York City	4,000
a municipal court district within NY City	1,500
any city council district within New York City	900
cities or counties having more than 250,000 inhabitants	2,000
cities or counties having more than 25,000 but not more than 250,000	1,000
any city, county, councilmanic or county legislative districts in any city other than NY City	500
any congressional district	1,250
any state senatorial district	1,200
any assembly district	500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision, a political subdivision containing more than one assembly district, county or other political subdivision, requirement is not to exceed the aggregate of the signatures required for the subdivision or parts of subdivision so contained.

***NOTE:** Section 1057-b of the New York City Charter Supersedes New York Election Law signature requirements for Designating and OTB Petitions and Independent nominating petitions with respect to certain NY City offices.

SIGNATURE REQUIREMENTS FOR INDEPENDENT NOMINATING PETITIONS FOR STATE/LOCAL OFFICES

5% of the total number of votes, excluding blank and void, cast for the office of governor at the last gubernatorial election in the political unit, except that not more than 3,500 signatures shall be required on a petition for any office to be filled in any political subdivision outside the City of New York, and not more than the following for any office to be voted for by all the voters of the entire state 15,000
(with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)

any county or portion thereof outside the city of NY	1,500
the City of New York	7,500
any county or borough or any two counties or boroughs within the city of NY City	4,000
a municipal court district	3,000
any city council district within NY City	2,700
any congressional district	3,500
any state senatorial district	3,000
any assembly district	1,500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision.

VOTER REGISTRATION

VOTER REGISTRATION FOR STATE/LOCAL PRIMARY

Aug. 19	Mail Registration for state/local Primary: Last day to postmark application and last day it must be received by board of elections is Aug. 24. §5-210(3)
Aug. 19	In person registration for state/local Primary: Last day application must be received by board of election to be eligible to vote in primary election §5-210, 5-211, 5-212
Aug. 24	Changes of address for state/local Primary received by this date must be processed. §5-208(3)

STATE/LOCAL ELECTION
VOTER REGISTRATION FOR GENERAL

Oct. 14	Mail Registration: Last day to postmark application for general election and last day it must be received by board of elections by Oct. 19. §5-210(3)
Oct. 14	In person registration: Last day application must be received by board of election to be eligible to vote in general election. If honorably discharged from the military or have become a naturalized citizen since October 14 th , you may register in person at the board of elections up until October 29 th §5-210, 5-211, 5-212
Oct. 19	Changes of address received by this date must be processed. §5-208(3)
Oct. 14	Change of Party Enrollment: Last day to receive. §5-304(3)
Oct. 1	First day for local registration. §5-202(1)
Oct. 8	Uniform day for local registration throughout the state. §5-202(3)

VOTING BY ABSENTEE

ABSENTEE VOTING FOR STATE/LOCAL PRIMARY

Sept. 6	Last day to postmark application for state/local primary ballot. §8-400(2)(c)
Sept. 12	Last day to apply in person for state/local primary ballot. §8-400(2)(c)
Sept. 12	Last day to postmark state/local ballot. Must be received by the county board no later than Sept. 20 th . §8-412(1)
Sept. 13	Last day to deliver state/local primary ballot in person to county board, by close of polls. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTER FOR STATE/LOCAL PRIMARY

Aug. 12	First day to mail ballot to Military/Special Federal Voter. §10-108(1)
Aug. 19	Last day for a board of elections to receive application for Military ballot for state/local primary if not previously registered. §10-106(5)
Sept. 6	Last day for a board of elections to receive Military application for state/local primary if previously registered. §10-106(5)
Sept. 12	Last day to apply personally for Military ballot for state/local primary, if previously registered. §10-106(5)
Sept. 12	Last day to postmark Military ballot for state/local primary and date it must be received by the board of elections is September 20 th . §10-114(1)

ABSENTEE VOTING FOR GENERAL ELECTION

Nov. 1	Last day to postmark application or letter of application for general election ballot. §8-400(2)(c)
Nov. 7	Last day to apply in person for ballot for general election ballot. §8-400(2)(c)
Nov. 7	Last day to postmark general election ballot. Must be received by the county board no later than Nov. 15 th . §8-412(1)
Nov. 8	Last day to deliver general election ballot in person to county board, by close of polls on election day. §8-412(1)

MILITARY/SPECIAL FEDERAL VOTERS FOR GENERAL

Oct. 7	Date to transmit Military/Special Federal ballots, per federal court order.
Oct. 29	Last day for a board of elections to receive application for a Military absentee ballot if not previously registered. §10-106(5)
Nov. 1	Last day for a board of elections to receive Military/Special Federal absentee application, if by mail and previously registered. §10-106(5)
Nov. 7	Last day to apply personally for a Military General Election ballot if previously registered. §10-106(5)
Nov. 7	Last day to postmark Military/Special Federal ballot and it must be received by the board of elections is Nov. 21 st . §10-114(1) §11-212

FINANCIAL DISCLOSURE

DATES FOR FILING

PRIMARY ELECTION	
32 Day Pre-Primary	August 22
11 Day Pre-Primary	September 2
10 Day Post Primary	September 23
August 26 th thru Sept. 8 th *	

GENERAL ELECTION

32 Day Pre-General	October 7
11 Day Pre-General	October 28
27 Day Post-General	December 5
Oct. 21 st thru Nov. 3 rd *	

* During this time period any contribution or loan which exceeds \$1,000 must be reported within 24 hours of receipt. This same contribution or loan must also be reported in the Post-Election report.

Periodic Reports

January 15 th
July 15 th