

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF WISCONSIN; WISCONSIN ELECTIONS
COMMISSION; and MEAGAN WOLFE, in her
official capacity as the Interim Administrator of the
Wisconsin Elections Commission,

Defendants.

Civil Action No.: 18-cv-471

COMPLAINT

Plaintiff United States of America alleges:

1. This action is initiated by the Attorney General on behalf of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. §§ 20301 *et seq.* UOCAVA provides that absent uniformed services voters and overseas U.S. citizen voters (“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 does not distinguish between overseas voters who reside overseas temporarily and overseas voters who reside overseas indefinitely. *See* 52 U.S.C. § 20310(5). The State of Wisconsin, through its laws and election administration procedures,

does not provide overseas voters who reside overseas temporarily all of the protections they are entitled to under UOCAVA.

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 overseas voters who reside overseas temporarily (“temporary overseas voters”), including overseas voters who reside overseas and intend to return to Wisconsin at some point in the future, will have the opportunity to vote guaranteed by UOCAVA in Wisconsin’s 2018 elections for Federal office and in future elections for Federal office.

3. This Court has jurisdiction pursuant to 52 U.S.C. § 20307 and 28 U.S.C. §§ 1345 and 2201.

4. Defendant State of Wisconsin (the “State”) is responsible for complying with UOCAVA, and ensuring that temporary overseas voters, including overseas voters who reside overseas and intend to return to Wisconsin at some point in the future, receive the protections they are entitled to under UOCAVA. 52 U.S.C. § 20302.

5. Defendant Wisconsin Elections Commission (“Elections Commission”) is responsible for administering laws in the State regarding elections. Wis. Stat. § 5.05(1).

6. Defendant Meagan Wolfe is the Elections Commission’s Interim Administrator and is sued in her official capacity. The Administrator also serves as the State’s Chief Election Officer. Wis. Stat. § 5.05(3g).

7. Among other requirements, UOCAVA requires states to provide UOCAVA voters the option to receive their blank absentee ballots by mail or electronically, and to permit UOCAVA voters to use Federal write-in absentee ballots. 52 U.S.C. § 20302(a)(7), (a)(3).

8. UOCAVA requires states to establish procedures to transmit blank absentee

ballots to UOCAVA voters by mail or electronically in accordance with the transmission method the voters designate. 52 U.S.C. § 20302(a)(7).

9. UOCAVA requires states to permit UOCAVA voters to use the Federal write-in absentee ballot as a back-up measure to vote in elections for Federal office if the voters have made timely application for, and have not received, the absentee ballots from their states. 52 U.S.C. §§ 20302(a)(3).

10. UOCAVA defines an “overseas voter” as (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; or (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. 52 U.S.C. § 20310(5). The federal law does not distinguish between those overseas voters who stay overseas indefinitely and those who reside overseas temporarily and intend to return to the United States.

11. Wisconsin’s statute governing federal overseas voting defines an “overseas elector” as “a U.S. citizen . . . who does not qualify as a resident of this state” Wis. Stat. § 6.24(1). However, Wisconsin’s definition of a resident of its state includes people who, when absent, intend to return to the state. Wis. Stat. § 6.10(1). Thus, Wisconsin’s definition of an “overseas elector” excludes temporary overseas voters.

12. Wisconsin law does not allow temporary overseas voters to receive absentee ballots electronically. Wisconsin Act 75, passed in 2011, prevents municipal clerks from faxing or emailing absentee ballots, except to military electors or those classified as permanent overseas

electors. Although a 2016 federal court order enjoined the State from prohibiting municipal clerks from sending absentee ballots by fax or email on grounds that the provision is unconstitutional, *see One Wisconsin Inst. v. Thomsen*, 198 F. Supp. 3d 896, 948 (W.D. Wis. 2016), Wisconsin has appealed that order. While the appeal has been pending, the Elections Commission issued guidance indicating that providing absentee ballots electronically to regular absentee voters—which includes temporary overseas voters—is optional. *See Frequently-Asked Questions – Implementation of Decision in One Wisconsin Institute Case*, August 26, 2016, available at <http://elections.wi.gov/node/4078>.

13. Wisconsin’s exclusion of temporary overseas voters from its statutory definition of “overseas elector,” deprives temporary overseas voters of two of the protections they are entitled to under UOCAVA.

(a) Wisconsin fails to ensure that all overseas voters are afforded the option to receive their blank ballots electronically, in violation of UOCAVA’s mandate that states guarantee that option to all UOCAVA voters. 52 U.S.C. § 20302(a)(7); and

(b) Wisconsin fails to permit temporary overseas voters to utilize Federal write-in absentee ballots, in violation of UOCAVA. 52 U.S.C. §§ 20302(a)(3).

14. The next Federal election scheduled in Wisconsin is the August 14, 2018 Federal primary election. Under UOCAVA, the 45-day deadline for transmitting ballots to all eligible UOCAVA voters is June 30, 2018. *See* 52 U.S.C. § 20302(a)(8).

15. An order of this Court requiring Defendants to take corrective action is necessary to ensure that the State’s temporary overseas voters receive all the protections to which they are entitled under UOCAVA for the upcoming 2018 Federal primary and general elections, and in all future Federal elections.

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 under 28 U.S.C. § 2201 that Wisconsin's failure to ensure that local clerks provide temporary overseas voters the option to receive their absentee ballots electronically, and to permit temporary overseas voters to use Federal write-in absentee ballots, violates UOCAVA, 52 U.S.C. §§ 20302(a)(7) and (a)(3).

(2) Issue injunctive relief ordering the Defendants, their agents and successors in office, and all persons acting in concert with them:

(a) To take such steps as are necessary to ensure that temporary overseas voters covered under UOCAVA are guaranteed the option to receive blank absentee ballots by mail or electronically and are permitted to utilize Federal write-in absentee ballots for the Federal elections to be held on August 14, 2018 and November 6, 2018;

(b) To take such steps as are necessary to afford temporary overseas voters who qualify for protection under UOCAVA a reasonable opportunity to learn of this Court's order;

(c) To report to the United States and the Court concerning the Defendants' actions taken to comply with the Court's order; and

(d) To take such other steps as are necessary to ensure that the State conducts all future Federal elections in compliance with UOCAVA requirements, including proposing legislation and taking any administrative actions needed to ensure that temporary overseas voters who intend to return to the United States are afforded all of the protections of UOCAVA.

The United States further asks this Court to order such other relief as the interests of justice may require, together with the costs and disbursements of this action.

Dated: June 19, 2018

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