

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF TEXAS
Austin Division

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CLERK OF COURT
BY: [Signature]

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE STATE OF TEXAS;)
GWYN SHEA, SECRETARY OF STATE)
OF THE STATE OF TEXAS; TEXAS)
REPUBLICAN EXECUTIVE COMMITTEE;)
SUSAN WEDDINGTON, Texas Republican)
Executive Committee Chairman;)
TEXAS DEMOCRATIC EXECUTIVE COMMITTEE;)
MOLLY BETH MALCOLM, Texas Democratic)
Executive Committee Chair;)
)
Defendants.)
)

Civil Action No.
A 02 CA 195 SS

STIPULATION OF DISMISSAL

All parties to the instant action hereby stipulate to dismiss this case pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii). This stipulation is based on enactment of Chapter 566 (2003) of the Texas Election Code by the Texas legislature, which satisfies the claims for relief in Plaintiff's complaint.

Plaintiff brought this action to enforce the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff, et seq. Plaintiff alleged that the compressed time period between certification of the federal primary election and the run-off election permitted insufficient time for round-trip transmission of ballots to and from Texas' overseas military and civilian voters. See Cmpl. ¶ 12. Under Texas law, the general primary is the second Tuesday in March in each even-numbered year, and

the run-off primary election date is the second Tuesday in April following the general primary election. See Texas Code § 41.007. At the time of filing its complaint and Motion for Temporary Restraining Order and Preliminary Injunction, Plaintiff submitted evidence that round-trip transmission of international mail from Texas ranges from 11 to 44 days, and that an allowance of 40 to 45 days is recommended by the Department of Defense, Federal Voting Assistance Program, for round-trip mailing of overseas ballots to ensure that the great majority of overseas voters have a reasonable opportunity to return their ballots in a timely manner. See Declaration of J. Scott Wiedmann, Deputy Director of the Federal Voting Assistance Program, Department of Defense, ¶¶ 10, 11.

This Court entered a Temporary Restraining Order and Preliminary Injunction on March 25, 2002, permitting qualified Texas voters¹ to use the Federal Write-in Absentee Ballot ("FWAB") for the April 9, 2002, primary run-off election. This Court's Order also required Defendants to take all necessary steps to ensure that appropriate election officials counted as validly cast ballots those FWABs that were completed by such voters as long as the ballots otherwise satisfied the requirements of Texas law, and were received by election

¹ Qualified voters were defined as those persons outside the United States who were qualified to vote in the State of Texas pursuant to the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff-1, and who timely applied for absentee ballots from appropriate election officials for the April 9, 2002, federal primary run-off election.

officials by the deadline established by State law.

Plaintiff's complaint also contained a claim for permanent relief. On July 31, 2002, this Court granted the parties' Joint Motion to Stay Proceedings to permit the parties, through the Secretary of State, to present this issue to the Texas legislature so that the State of Texas could resolve the issue in a manner best suited to other State interests.

On April 10, 2003, the Texas legislature enacted House Bill 1597, which requires the Secretary of State to prescribe procedures to allow a voter who qualifies to vote by a federal write-in absentee ballot to vote through use of a FWAB in any general, special, primary, or run-off election for federal office. The Senate passed H.B. 1597 on May 28, 2003, and the bill was signed by Governor Rick Perry on June 20, 2003. This legislation makes permanent the relief ordered by the Court for the April 9, 2002, run-off election.

Plaintiff agreed to expedite its review pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, of any legislative action taken on this issue.² On August 7, 2003, the Attorney General of Texas submitted the legislative change for Section 5 review, and on August 27, 2003, Attorney General interposed no objection to the change.

The Secretary of State subsequently issued a guidance

² Texas is covered by Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, and as such must obtain preclearance of any changes to voting procedures. The Attorney General has 60 days to review voting changes submitted pursuant to Section 5.

memorandum to all county registrars of voters, informing them of the legislative change set forth by H.B. 1597, and submitted the memorandum for Section 5 review on November 20, 2003. On December 18, 2003, the Attorney General interposed no objection to the change.

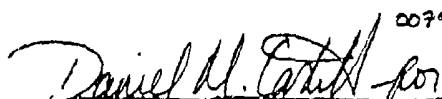
Accordingly, the United States' claim for permanent relief as set forth in its complaint has now been satisfied, and no further claims for relief remain in dispute. The parties therefore submit this stipulation of dismissal.

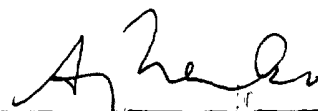
Respectfully submitted,

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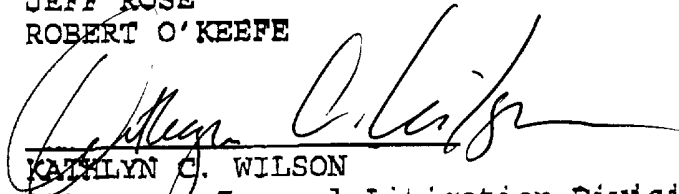

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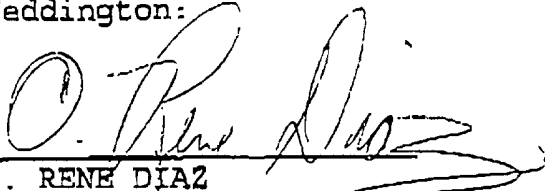
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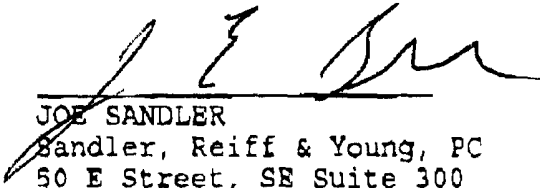
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