

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 10-cv-968
v.	)	
	)	
THE STATE OF NEW MEXICO and	)	
NEW MEXICO SECRETARY OF STATE	)	
MARY HERRERA, in her official capacity,	)	
	)	
Defendants.	)	
	)	
_____	)	

**CONSENT DECREE**

Plaintiff United States of America (“United States”) initiated this action against Defendants to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7. The United States’ Complaint alleges a violation of UOCAVA arising from the Defendants’ acknowledgement that absentee ballots from at least six New Mexico counties—Curry, Los Alamos, McKinley, Rio Arriba, Sandoval, and Taos—were not timely transmitted to absent uniformed services voters and overseas voters (“UOCAVA voters”) by the 45th day before the November 2, 2010 Federal general election, as required by UOCAVA. New Mexico concedes that, despite diligent efforts, ballots were not transmitted to UOCAVA voters in Curry, Los Alamos, McKinley, Rio Arriba, Sandoval, and Taos Counties by the 45-day deadline established in UOCAVA. Accordingly, without this Consent Decree, some of New Mexico’s UOCAVA voters will not be provided the time specified under Federal law to receive, mark, and submit their ballots in time to have those ballots counted in the November 2, 2010 Federal general election.

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. The parties share the goal of providing UOCAVA voters with sufficient opportunity under Federal law to participate in the November 2, 2010 Federal general election. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the UOCAVA violation alleged by the United States. Accordingly, the United States and Defendants stipulate and agree that:

1. This action is brought by the 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”). 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.” 42 U.S.C. § 1973ff-1.

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4, and this Court has jurisdiction of this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

3. Defendant State of New Mexico is responsible for complying with UOCAVA and ensuring that validly requested absentee ballots are sent to UOCAVA voters in accordance with the statute’s requirements. 42 U.S.C. § 1973ff-1 & 1973ff-6.

4. Defendant Mary Herrera is New Mexico's chief state election officer and responsible for the State's compliance with UOCAVA. NMSA 1978, § 1-2-1.

5. 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. 42 U.S.C. § 1973ff-1(a)(8).

6. Failure to transmit absentee ballots to those UOCAVA voters by the 45th day before the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A) of UOCAVA.

7. New Mexico received timely requests for absentee ballots for the November 2, 2010 Federal general election from voters who are entitled to vote pursuant to the provisions of UOCAVA.

8. The deadline for New Mexico to transmit absentee ballots to UOCAVA voters who had requested them 45 days before the November 2, 2010 election for federal office was September 18, 2010.

9. Under New Mexico law, ballots from UOCAVA voters must be received by 7 pm on election day to be counted. NMSA 1978, § 1-6-10(B).

10. Election officials in six New Mexico counties—Curry, Los Alamos, McKinley, Rio Arriba, Sandoval, and Taos—did not transmit ballots by September 18, 2010 to the UOCAVA voters in those counties who validly requested ballots by that date. Instead, those ballots were transmitted to UOCAVA voters two to four days late on September 20-22, 2010. Depending on

the preference of the voter, the ballots were either sent electronically or mailed by the U.S. Postal Service. At least 102 ballots were transmitted late, 50 by postal mail.

11. Defendants' failure to transmit absentee ballots to UOCAVA voters who requested ballots 45 days in advance of the November 2, 2010 Federal general election by September 18, 2010, constitutes a violation of Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

12. To ensure that New Mexico's UOCAVA voters will have sufficient opportunity under Federal law to receive the absentee ballots they have requested, and to submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election, the parties agree that this Court should enter an order that extends the deadline for receipt of ballots for UOCAVA voters by four days after the election. Under this extension, absentee ballots from all UOCAVA voters who requested ballots by September 18, 2010 that are executed and sent by November 2, 2010 and received by 7 pm on November 6, 2010 will be accepted and tabulated in the final Federal general election results.

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 that:

- (1) To ensure that New Mexico's UOCAVA voters will have sufficient opportunity under Federal law to receive absentee ballots they have requested, and to submit marked absentee ballots in time to be counted for the

November 2, 2010 Federal general election, Defendants shall count as validly cast ballots in the November 2, 2010 Federal general election all ballots, including Federal Write-In Absentee Ballots, cast by UOCAVA voters who requested ballots by September 18, 2010, provided such ballots are executed and sent by November 2, 2010, received by 7 pm on November 6, 2010, and are otherwise valid.

- (2) To provide an opportunity for UOCAVA voters to learn of this Court's order, upon the entry of this Consent Decree, the Defendants shall issue a press statement for immediate release, posted immediately on New Mexico's election information website, and distributed to the Federal Voting Assistance Program; International Herald Tribune (<http://www.iht.com>); USA Today International (<http://www.usatoday.com>); Military Times Media Group ([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes ([www.estripes.com](http://www.estripes.com)); and any other appropriate newspaper or news media. The news release shall, at a minimum: (a) summarize this order, including notice that the deadline for receipt of all ballots from UOCAVA voters who requested ballots by September 18, 2010 has been extended to November 6, 2010, and (b) provide appropriate contact information for assistance.

- (3) The Defendants shall provide a report to the United States no later than October 22, 2010 indicating when and by what means the UOCAVA voters were given notice of the extension of the receipt deadline for their ballots.
- (4) The Defendants shall file a report with this Court no later than December 17, 2010 concerning the number of UOCAVA absentee ballots, received and counted for the November 2, 2010 general election for Federal office. The report will set forth the following information, categorized by uniformed services overseas voters, uniformed services voters within the United States, and overseas civilian voters:
- a. The number of absentee ballots from UOCAVA voters received by each county before the close of the polls on November 2, 2010 and counted;
  - b. The number of absentee ballots from UOCAVA voters received and counted by each county after the close of the polls on November 2, 2010 but prior to 7 pm on November 6, 2010, broken down by county;
  - c. The number of absentee ballots from UOCAVA voters received by each county later than 7 pm on November 6, 2010; and

d. The number of absentee ballots from UOCAVA voters received by each county that were not counted in the general election for Federal office, for reasons other than late receipt.

(5) The Defendants shall take such actions as are necessary to ensure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including determining the cause of the late mailed ballots and taking any administrative or other actions needed to reduce the potential for future UOCAVA violations arising from New Mexico's or the individual counties' election practices. The parties agree to confer on the progress of these efforts, and Defendants shall provide a status report to the United States by March 15, 2011.

The Court shall retain jurisdiction over this action through June 30, 2011 to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree and to enter such relief as may be necessary to abate any UOCAVA violation with respect to future Federal elections caused by New Mexico's election practices.

Date: October 12, 2010

The undersigned agree to entry of this Consent Decree.

For the Plaintiff:

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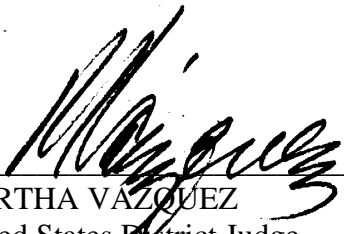


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SO ORDERED this 14th day of October, 2010.

  
MARTHA VAZQUEZ  
United States District Judge