

U.S. DISTRICT COURT
DISTRICT OF VERMONT
FILED

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
THE STATE OF VERMONT; DEBORAH L.)
MARKOWITZ, SECRETARY OF STATE OF)
VERMONT, in her official capacity,)
)
Defendants.)
_____)

Civil Action No. 2:08-cv-217

COMPLAINT

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. §§ 1973ff-1973ff-6 (2003).
2. 42 U.S.C. § 1973ff-1(c) mandates that States (and local governments through their respective States) report to the Election Assistance Commission “[n]ot later than 90 days after the date of each regularly scheduled general election for Federal office” the “combined number of absentee ballots that are transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election.” The States “shall make such a report available to the general public.” Id.
3. The Attorney General of the United States is given authority to ensure that States

comply with 42 U.S.C. § 1973ff-1(c) and report the number of UOCAVA ballots transmitted, returned, and cast. Under 42 U.S.C. § 1973ff-4, “[t]he 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 subchapter [UOCAVA].”

4. This Court has jurisdiction under 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201(a).

5. The Defendant State of Vermont (the “State”) is responsible for complying with the UOCAVA, and ensuring required information is transmitted to the Election Assistance Commission within 90 days of a Federal Election.

6. Defendant Deborah L. Markowitz is sued in her official capacity as the Secretary of State of the State of Vermont. As the Secretary of State, she is the chief election officer for Vermont. See Vt. Stat. Ann. tit. 17, §2103 (40). The principal office of the Secretary of State elections division is in Montpelier, Vermont.

7. Vermont failed to comply with § 1973ff-1(c) in 2006 and did not report any data as required.

8. Upon information and belief, Vermont will likely fail to comply with § 1973ff-1(c) again in 2008.

9. By failing to comply with § 1973ff-1(c), Vermont has not adhered to the congressional mandate that it capture and report specific election-related data regarding absent uniformed services voters and overseas voters in general elections for Federal office.

10. An order of this Court is necessary requiring Defendants to take corrective action for the November 4, 2008, election in order to protect the rights granted by the UOCAVA.

WHEREFORE, Plaintiff prays that this Court hear this action pursuant to 42 U.S.C. § 1973ff-1(c); issue a declaratory judgment under 28 U.S.C. § 2201(a) that Vermont officials failed to track and report data about the number of UOCAVA ballots requested, transmitted, and cast; and issue injunctive relief ordering the Defendants, their agents and successors in office, and all persons acting in concert with them:


- (1) to require all election officials to implement procedures to record data about the number of UOCAVA ballots requested, transmitted and cast by UOCAVA voters; and,
- (2) to report data required by § 1973ff-1(c) to the Election Assistance Commission and general public within 90 days after the November 4, 2008, election.

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


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