

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NORTH CAROLINA;
NORTH CAROLINA STATE
BOARD OF ELECTIONS; and
GARY O. BARTLETT, Executive Director,
North Carolina State Board of Elections,

Defendants.

Civil Action No. _____

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"), 42 U.S.C. §§ 1973ff *et seq.*, which provides, *inter alia*, that absent uniformed services voters and overseas 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. This action is brought to ensure that UOCAVA voters, who are otherwise qualified to vote in North Carolina's federal second primary elections, will have an opportunity to vote in those elections and have their ballots counted. The United States seeks both a preliminary injunction to obtain compliance with the federal law for the May 30, 2006 second primary election, and permanent relief to ensure future compliance with UOCAVA.
2. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345.

3. Defendant State of North Carolina is charged with the responsibility of assuring that State election laws, as applied, comply with the provisions of UOCAVA.

4. Defendant North Carolina State Board of Elections is generally responsible for administering primary and general elections under State law, certifying primary election results prior to any second primary election, and creating ballots, including absentee ballots, for all elections. *See* N.C. Gen. Stat. §§ 163-22, 163-111(c), 163-165.3. Defendant Gary O. Bartlett is the Executive Director of the North Carolina State Board of Elections and is being sued in his official capacity.

5. On May 2, 2006, the State of North Carolina will conduct a federal primary election in which voters will select or participate in the selection of their respective parties' candidates for thirteen seats in the United States House of Representatives. A second primary election will be held on May 30, 2006, if necessary, if no candidate receives a substantial plurality of the votes and the candidate with the second highest vote total in a race requests a second primary. N.C. Gen. Stat. §§ 163-111(a)-(c). A "substantial plurality" is defined as receiving 40% of the votes cast in an election. N.C. Gen. Stat. § 163-111(b). In 2004, North Carolina had two second primary elections in the 5th and 10th Districts for the United States House of Representatives.

6. County election officials of North Carolina have received timely requests for absentee ballots from voters who are entitled to vote pursuant to the provisions of UOCAVA.

7. Under North Carolina law, only those absentee ballots received by 5:00 p.m. on the day before the election can be counted. N.C. Gen. Stat. § 163-231(b) & 163-255. In 2006, each County Board of Elections will meet to canvass the votes and authenticate the results within

seven days of the May 2, 2006 primary election. N.C. Gen. Stat. § 163-182.5. Any candidate that requests a second primary must do so by noon on the ninth day after the primary. N.C. Gen. Stat. § 163-111(c)(1). The State Board of Elections must certify the May 2, 2006 primary results and the need for a second primary election. *Id.*

8. In order to allow UOCAVA voters a fair opportunity to vote by absentee ballot, election officials in North Carolina must mail the ballots to the voters sufficiently in advance of the election so that voters can receive, cast and return their absentee ballots by the deadline established under North Carolina law.

9. Based on data from the United States Postal Service and the Military Postal Service Agency, the Federal Voting Assistance Program ("FVAP") of the Department of Defense and the United States Election Assistance Commission recommend that States allow 45 days for the round trip transit of an overseas ballot. At a minimum, FVAP has determined that States must provide no less than 30 days for the round-trip transit of a ballot to overseas locations.

10. Because of the compressed period of time between the primary and a second primary election in North Carolina, absentee ballots will not be mailed sufficiently before the May 30, 2006 federal second primary election, if one is necessary, to afford UOCAVA voters an opportunity to vote. Given the time period allowed for requesting a second primary and certifying the first primary results, election officials will not be able to mail absentee ballots for a second primary until at least 10 days after the first primary. This allows no more than 17 days for the round-trip transmission of ballots.

11. The inability of election officials in North Carolina to mail absentee ballots to

UOCAVA voters sufficiently before the May 30, 2006 second primary election, so as to allow the voting and return of ballots by 5:00 p.m. on the day before the second primary, will deprive certain specially covered United States citizens of an opportunity to vote in the federal second primary election in violation of UOCAVA.

12. An order of this Court is necessary requiring Defendants to take corrective action in order to protect the rights granted by UOCAVA in the 2006 primary elections and in future elections.

WHEREFORE, plaintiff prays that this Court hear this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345; issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of North Carolina officials to send absentee ballots to UOCAVA voters in sufficient time to be received, cast, and returned by the State's deadline in any federal second primary election violates UOCAVA; and issue permanent injunctive relief ordering the defendants, their agents and successors in office, and all persons acting in concert with them:

- (1) to include, in conjunction with the mailing of regular absentee ballots to UOCAVA voters for the May 2, 2006 federal primary election, a blank state authorized special write-in ballot to be used in the event of a federal second primary election on May 30, 2006, along with instructions regarding how voters can obtain all necessary information about any possible federal second primary election and other appropriate instructions regarding the casting of such ballot;
- (2) within ten (10) days of the May 2, 2006 federal primary, to: (a) publish prominently on the State Board of Elections website, as well as any county

clerk's website where a second primary election will occur, information identifying the federal contests for which a second primary will be necessary under State law and the names of the candidates for each second primary election; and (b) notify the FVAP, and other appropriate news media and websites that are focused on military and overseas voters, regarding the federal races involved in a second primary election and the candidates participating in that election;

- (3) to count as validly cast ballots, in contests relating to the selection of nominees for federal office, those ballots cast by voters, who are qualified to vote in North Carolina pursuant to UOCAVA, and who otherwise comply with State law for absentee voting, provided that the ballot is executed and sent (whether by federal postal services or commercial delivery services) or delivered in person by May 30, 2006, and received on or before 5:00 p.m. on Monday, June 5, 2006. Notwithstanding the above, election results may be formally certified based on ballots received by the close of the polls in any election in which the number of outstanding absentee ballots from UOCAVA voters could not mathematically alter the outcome, subject to amendment or re-certification for any election where such ballots returned by the extended receipt deadline change the total of votes cast for any candidate;
- (4) to accept for federal offices, at the May 30, 2006 second primary election, the Federal Write-in Absentee Ballot provided for in UOCAVA, 42


U.S.C. § 1973ff-2, provided that ballot is cast by a UOCAVA voter, is executed and sent (whether by federal postal services or commercial delivery services) or delivered in person by May 30, 2006, and is received by 5:00 p.m. on Monday, June 5, 2006;

- (5) to accept for the May 30, 2006 second primary election, any special write-in ballot or the Federal Write-in Absentee Ballot transmitted by facsimile or by email, so long as the scanned completed ballot is contained in the email, along with any other documents required by State law, provided that the ballot is cast by a UOCAVA voter and is received by 5:00 p.m. on May 30, 2006;
- (6) to take such steps as are necessary to afford UOCAVA voters eligible to participate in the May 30, 2006 federal second primary election a reasonable opportunity to learn of this Court's order;
- (7) to take such steps as are necessary to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future second primary elections for federal office; and
- (8) to provide a report to the United States concerning the number of UOCAVA ballots, including Federal Write-in Absentee Ballots, received and counted, by county, for the May 30, 2006 federal second primary election pursuant to this Court's order.

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.

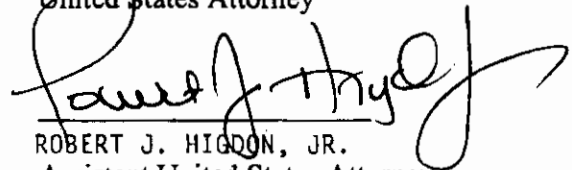
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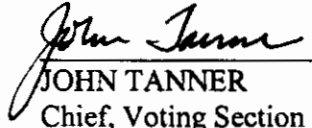
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