

1 JOHN M. GORE
2 Acting Assistant Attorney General
3 Civil Rights Division

4 T. CHRISTIAN HERREN, JR.
5 ROBERT S. BERMAN
6 DAVID G. COOPER (NY Bar #4683371)
7 NEAL R. UBRIANI (NY Bar #5139217)
8 Attorneys, Voting Section
9 Civil Rights Division
10 U.S. Department of Justice
11 950 Pennsylvania Avenue, N.W.
12 Washington, D.C. 20530
13 Telephone: (202) 307-2767
14 Facsimile: (202) 307-3961
15 Email: david.cooper@usdoj.gov

16 Counsel for Plaintiff
17 United States of America

18 IN THE UNITED STATES DISTRICT COURT
19 FOR THE DISTRICT OF ARIZONA

20 United States of America,
21
22 Plaintiff,

23 v.

24 The State of Arizona; and
25 Michele Reagan, Secretary of
26 State of Arizona, in her
27 official capacity,

28 Defendants.

Case No.:

COMPLAINT

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States of America under the Uniformed and Overseas Citizens Absentee Voting Act

1 (“UOCAVA”), 52 U.S.C. §§ 20301 *et seq.* UOCAVA requires that absent uniformed
2 services voters and overseas voters (“UOCAVA voters”) shall be permitted “to use
3 absentee registration procedures and to vote by absentee ballot in general, special,
4 primary, and runoff elections for Federal office.” 52 U.S.C. § 20302(a)(1).

5 2. The Attorney General is authorized to enforce the provisions of UOCAVA, 52
6 U.S.C. § 20307, and brings this action for declaratory and injunctive relief to ensure that
7 UOCAVA voters will have the opportunity to vote guaranteed by UOCAVA in Arizona’s
8 2018 special election cycle to fill a vacancy in the State’s Eighth Congressional District,
9 and in future special elections for the House of Representatives. This Court has
10 jurisdiction of this action pursuant to 52 U.S.C. § 20307 and 28 U.S.C. §§ 1345 and
11 2201.

12 3. Defendant State of Arizona is responsible for complying with UOCAVA and
13 ensuring that validly requested absentee ballots are transmitted to UOCAVA voters in
14 accordance with the statute’s terms. 52 U.S.C. § 20302.

15 4. Defendant Michele Reagan is the Arizona Secretary of State and is sued in her
16 official capacity. The Arizona Secretary of State is the chief state election officer and
17 responsible for the coordination of state responsibilities under UOCAVA. Ariz. Rev.
18 Stat. § 16-142.

19 5. Section 102(a)(8)(A) of UOCAVA requires that states transmit validly requested
20 ballots to UOCAVA voters not later than 45 days before an election for Federal office
21 when the request is received at least 45 days before the election. 52 U.S.C. §
22 20302(a)(8)(A).

23 6. Pursuant to the Arizona election code, when a vacancy occurs in the office of a
24 representative in Congress more than six months prior to the next general election, the
25 governor shall call a special primary election and special general election for at least 80
26 and no more than 90 days from the date of the occurrence of the vacancy. Ariz. Rev.
27 Stat. § 16-222(B). On December 8, 2017, Representative Trent Franks resigned from
28 Congress. Representative Franks represented the Eighth Congressional District, which is

1 located entirely within Maricopa County. The governor set February 27, 2018 as the date
2 for the special primary election and April 24, 2018 as the date for the special general
3 election.

4 7. Under Arizona's election code, candidates were required to file nominating
5 petitions for the special primary election by January 10, 2018, and the deadline to file
6 challenges to such nominating petitions was January 18, 2018. Ariz. Rev. Stat. § 16-
7 222(B).

8 8. The deadline for transmission of absentee ballots to UOCAVA voters who
9 requested them at least 45 days before the special primary election was January 13, 2018.
10 The deadline for transmission of absentee ballots to UOCAVA voters who requested
11 them at least 45 days before the special general election is March 10, 2018.

12 9. On January 12, 2018, the day before the UOCAVA transmission deadline,
13 Maricopa County election officials transmitted ballots (the "original ballots") to all
14 eligible UOCAVA voters who had requested them by that date.

15 10. Because of the possibility that changes to the ballot could result from challenges
16 to a candidate's nominating petition, Maricopa County election officials included a notice
17 with the original ballots explaining that the list of candidates was not yet final due to
18 potential candidate nomination petition challenges, and the final list of candidates would
19 not be confirmed until January 25, 2018. The notice advised that an updated official
20 ballot would be sent on that date. It further advised that voters could choose to vote the
21 enclosed ballot, or wait for the updated ballot; but, if they voted the enclosed ballot and
22 cast their vote for a candidate who was subsequently disqualified, they would not be able
23 to vote a second ballot or change their vote.

24 11. Some of the UOCAVA voters to whom original ballots were sent on January 12,
25 2018 received Republican Party, Libertarian Party, or Green Party ballots. No challenges
26 were ultimately filed by the January 18, 2018 deadline to the candidates on the
27 Republican Party, Libertarian Party, or Green Party ballots. Accordingly, on January 19,
28 2018, Maricopa County election officials sent a second notice to those voters explaining

1 that no candidate petition challenge had been filed for the Republican, Libertarian or
2 Green Party nomination. Therefore, eligible UOCAVA voters were notified that the
3 ballot transmitted on January 12, 2018 had not changed and voters should cast that
4 original ballot. The notice further advised that the UOCAVA voters should return their
5 voted ballot so that it is received no later than 7:00 p.m. on Election Day, February 27,
6 2018.

7 12. Some of the UOCAVA voters to whom original ballots were sent on January 12,
8 2018 received Democratic Party ballots. These ballots (the “original Democratic
9 ballots”) included the names of three candidates who had filed timely nominating
10 petitions. Challenges were ultimately filed by January 18, 2018 to two of these three
11 candidates. On January 23, 2018, a challenge to one of the Democratic Party candidates
12 was sustained by a state court, and the candidate was ordered removed from the ballot.
13 On January 23, 2018, Maricopa County election officials sent corrected ballots reflecting
14 this change (the “corrected Democratic ballots”) to UOCAVA voters who had received
15 original Democratic ballots. Along with the corrected Democratic ballots, election
16 officials included a notice explaining that one of the candidates listed on the ballot mailed
17 on January 12, 2018 had been removed pursuant to a court order. Therefore, the notice
18 explained that the voter should cast a corrected ballot for the Democratic Party nominee,
19 which was enclosed with the notice. The notice further advised the UOCAVA voters to
20 vote the corrected ballot included with the notice and to return it so that it is received by
21 7:00 p.m. on Election Day, February 27, 2018.

22 13. The corrected Democratic ballots were transmitted either electronically or by
23 postal mail based on the voters’ preferred transmittal method. All UOCAVA voters have
24 the option to return their ballots by electronic upload, facsimile, or mail, regardless of
25 their previously requested transmittal method.

26 14. Under Arizona law, ballots returned by UOCAVA voters must be received by
27 7:00 p.m. on Election Day to be counted. *See* Ariz. Rev. Stat. §§ 16-547(C) and
28 16-551(C). Accordingly, in order to be counted, the corrected Democratic ballots must

1 be received by 7:00 p.m. on February 27, 2018, which is 35 days after the date of
2 transmittal of the corrected ballots.

3 15. The inability of the State to transmit the final absentee ballots to UOCAVA
4 voters receiving a Democratic Party ballot by the 45th day before the February 27, 2018
5 special primary election for the House of Representatives violates Section 102(a)(8)(A)
6 of UOCAVA, 52 U.S.C. § 20302(a)(8)(A).

7 16. Furthermore, the notice sent to all UOCAVA voters for all parties on January 12
8 along with the original ballots encouraged voters to await further notice to submit their
9 ballots, and to await receipt of an “updated official ballot.” However, UOCAVA voters
10 who received Republican Party, Libertarian Party, or Green Party ballots were never sent
11 an “updated official ballot,” and a second notice advising that there was no change to the
12 ballot was not transmitted until January 19, 2018. To be counted, these original ballots
13 must be received by February 27, 2018, which is 39 days after the date of transmittal of
14 the second notice. As a result, these UOCAVA voters have been deprived of the
15 meaningful opportunity to cast a ballot that UOCAVA’s 45-day transmission deadline
16 seeks to ensure, which violates Section 102(a)(8)(A) of UOCAVA, 52 U.S.C. §
17 20302(a)(8)(A).

18 17. An order of this Court is now necessary to require Defendants to take corrective
19 action to protect the rights granted by UOCAVA and to ensure that UOCAVA voters
20 have sufficient opportunity under Federal law to receive, mark, and return their absentee
21 ballots in time to be counted for the February 27, 2018 special primary election for the
22 House of Representatives, and in future special elections for Federal office.

23 WHEREFORE, the United States asks this Court to hear this action pursuant to 52
24 U.S.C. § 20307 and 28 U.S.C. §§ 1345 and 2201, and:

- 25 (1) Issue a declaratory judgment under 28 U.S.C. § 2201 that Defendants’
26 inability to ensure that final absentee ballots were transmitted to UOCAVA
27 voters at least 45 days in advance of the February 27, 2018 special primary
28

1 election for the House of Representatives violates Section 102(a)(8)(A) of
2 UOCAVA, 52 U.S.C. § 20302(a)(8)(A);

3 (2) Issue a declaratory judgment under 28 U.S.C. § 2201 that the provisions of
4 the Arizona election code governing the schedule for special elections, to
5 the extent they impede Defendants' ability to transmit final absentee ballots
6 to UOCAVA voters at least 45 days in advance of any special election for
7 the House of Representatives, violate Section 102(a)(8)(A) of UOCAVA,
8 52 U.S.C. § 20302(a)(8)(A); and

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

11 (a) To take such steps as are necessary to ensure that UOCAVA voters
12 have sufficient opportunity in accordance with UOCAVA to receive,
13 mark, and return their ballots in time to have them counted for the
14 2018 special primary and general election for the House of
15 Representatives;

16 (b) To take such steps as are necessary to afford UOCAVA voters
17 affected by the Court's order a reasonable opportunity to learn of the
18 order;

19 (c) To provide reports to the United States and the Court concerning the
20 transmission, receipt, and counting of UOCAVA ballots for the
21 2018 special primary and general election for the House of
22 Representatives pursuant to this Court's order; and

23 (d) To take such other steps as are necessary to ensure that Arizona
24 conducts all future special elections for the House of Representatives
25 in compliance with UOCAVA.

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

28

1 Date: February 14, 2018

2
3 JOHN M. GORE
4 Acting Assistant Attorney General
5 Civil Rights Division

6 /s/ David G. Cooper
7 T. CHRISTIAN HERREN, JR.
8 ROBERT S. BERMAN
9 DAVID G. COOPER (NY Bar #4683371)
10 NEAL R. UBRIANI (NY Bar #5139217)
11 Attorneys, Voting Section
12 Civil Rights Division
13 U.S. Department of Justice
14 950 Pennsylvania Avenue, N.W.
15 Rm. 7254 NWB
16 Washington, D.C. 20530
17 Telephone: (202) 307-2767
18 Facsimile: (202) 307-3961
19 Email: david.cooper@usdoj.gov
20
21
22
23
24
25
26
27
28