

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO BOARD OF ELECTION)	
COMMISSIONERS and DAVID ORR, in)	
his official capacity as County Clerk of)	Case No. 09 CV 82
Cook County, Illinois,)	
)	Judge Der-Yeghiayan
Plaintiffs,)	Magistrate Judge Ashman
)	
v.)	MEMORANDUM OF THE
)	UNITED STATES IN
ILLINOIS STATE BOARD OF ELECTIONS,)	SUPPORT OF THE
)	PLAINTIFFS' PROPOSED
Defendant.)	ORDER
_____)	

The United States, as *amicus curiae*, respectfully submits this Memorandum in support of the proposed order filed by the Plaintiffs on January 12, 2009 in the above-captioned case ("Proposed Order").

This action concerns the special primary and general elections to fill the vacancy in the office of United States Representative for the Fifth Congressional District, scheduled for March 3 and April 7, 2009, respectively. Pursuant to its responsibility for enforcing the Uniformed and Overseas Citizens Absentee Voting Act of 1986, 42 U.S.C. §§ 1973ff to 1973ff-6 ("UOCAVA"), the United States' primary interest in this case is to ensure that the relief ordered provides military and overseas citizens the opportunity to vote guaranteed by that federal statute. See Unopposed Motion of the United States to Participate as Amicus Curiae, filed on January 14, 2009.

The United States has conferred with the parties and reviewed the terms of the Proposed Order that pertain to voters entitled to vote under UOCAVA. In short, it appears that the election schedule modifications and additional procedures embodied in the Proposed Order related to voting by military and overseas citizens adequately address the State's UOCAVA obligations.

UOCAVA requires, *inter alia*, that each state allow qualified United States citizens “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-1.¹ In order to allow absent military and overseas citizens to exercise this right, states must ensure that absentee ballots are mailed sufficiently in advance of a scheduled election so as to allow the receipt, execution, and return of the ballot to the appropriate election official by the state statutory deadline. This federal right would be meaningless if state election officials mail ballots too late to allow those voters to participate.

Based on United States Postal Service, United States Military Postal Service Agency, and United States Department of State estimates, it is well established that a minimum of thirty days is needed for round trip delivery of international and military mail to overseas locales. The United States Department of Defense, through its Federal Voting Assistance Program (“FVAP”), is the primary administrator of UOCAVA. Based on the federal postal data and its experience in administering the Act, FVAP advises that thirty days is the minimum time officials should allow for overseas delivery and return and recommends that states allow at least forty-five days for the round trip mailings overseas.

¹ Citizens protected by UOCAVA include: (1) members of the United States uniformed services and merchant marines and their spouses and dependents; and (2) United States citizens residing outside the United States. 42 U.S.C. § 1973ff-6. Under UOCAVA, a voter may request (pursuant to the Federal Post Card Application established by the Act) that election officials send an absentee ballot “for each subsequent election for Federal office held in the State through the next 2 regularly scheduled general elections for Federal office.” 42 U.S.C. § 1973ff-3(a). Thus, for the 2009 special elections, election officials are required to provide absentee ballots to all voters for whom such applications were processed since the November 7, 2006 federal general election, and who are otherwise qualified to vote in the special election.

The Proposed Order sets forth modifications to the election schedule and procedures that, in their totality, will ensure that there is sufficient time for the round-trip of absentee ballots sent to military and overseas voters for the special elections. Plaintiffs' proposed calendar for the special Congressional election will provide for a round-trip transit period of 46 days for the special primary (returned ballots must arrive by March 9, the sixth day after the election) and 41 days for the special general election (receipt deadline is April 21, the 14th day after the election). These time periods fall well within the 30-day minimum and exceed or approach the 45-day mark recommended by the Defense Department. Moreover, in addition to the option of receiving the ballots by mail, the Proposed Order affords UOCAVA voters the option of receiving their ballots by fax or electronic mail, and voters may return their ballots via fax. These options provide UOCAVA voters alternative methods to expedite ballot delivery in the special election despite the shortened election schedule.

The United States is satisfied that, if implemented together with the important notice and publicity measures set forth in the Proposed Order, the proposed modifications to the elections calendar and procedures are sufficient to ensure compliance with UOCAVA.

Respectfully submitted,

Date: 14th day of January, 2009

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