

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	ACTION FOR DECLARATORY
THE GOVERNMENT OF THE VIRGIN	)	AND INJUNCTIVE RELIEF
ISLANDS; VIRGIN ISLANDS JOINT	)	
BOARDS OF ELECTIONS; BOARD OF	)	
ELECTIONS, ST. CROIX DISTRICT;	)	COMPLAINT
BOARD OF ELECTIONS, ST. THOMAS/	)	
ST. JOHN DISTRICT; AND JOHN	)	
ABRAMSON, JR., VIRGIN ISLANDS	)	
SUPERVISOR OF ELECTIONS,	)	
in his official capacity,	)	
	)	
Defendants.	)	
	)	
_____	)	

The United States of America alleges:

1. This action is initiated by the Attorney General on behalf of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) of 1986, 42 U.S.C. §§ 1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act (“MOVE Act”) of 2009, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-35 (2009). UOCAVA requires that absent uniformed services voters and overseas voters 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(a)(1).
2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. §1973ff-4, and brings this action for declaratory and injunctive relief to ensure that absent

uniformed services voters and overseas voters (“UOCAVA voters”) will have the opportunity to vote guaranteed by UOCAVA in the Territory of the Virgin Islands 2012 Federal elections and in all future elections for Federal office.

3. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4; 28 U.S.C. §§ 1345, 2201; and 48 U.S.C. § 1612(a).

4. Defendant Territory of the Virgin Islands is considered a State for purposes of UOCAVA, *see* 42 U.S.C. 1973ff-6(6), and thus is charged with the responsibility of complying with UOCAVA and ensuring that validly requested absentee ballots are transmitted to UOCAVA voters in accordance with its terms. 42 U.S.C. § 1973ff-1.

5. Defendant Virgin Islands Joint Boards of Elections is the policy-making body of the Virgin Islands Elections System. 18 V.I. Code Ann. tit. 18, § 4(a). The Joint Boards of Elections can “promulgate and issue uniform rules and regulations for the administration and the enforcement of elections laws” in the Territory. V.I. Code Ann. tit. 18, § 47(13).

6. Defendant Board of Elections, St. Croix District, has general jurisdiction over the election process in the St. Croix Election District, including “the registration of electors and conduct of primaries and elections.” V.I. Code Ann. tit. 18, §§ 41 and 47.

7. Defendant Board of Elections, St. Thomas/St. John District, has general jurisdiction over the election process in the St. Thomas/St. John Election District, including the “registration of electors and conduct of primaries and elections.” V.I. Code Ann. tit. 18, §§ 41 and 47.

8. Defendant John Abramson, Jr. is sued in his official capacity as the Supervisor of Elections of the Territory of the Virgin Islands. The Supervisor of Elections is appointed by the Joint Boards of Elections and is the Territory’s chief election official. 18 V.I. Code Ann. tit. 18,

§ 4. The Supervisor of Elections is, among other things, charged with preparing, receiving applications for, and distributing absentee ballots. *Id.*

9. On September 8, 2012, the Territory will hold a Federal primary election for the Territory's Delegate to the U.S. House of Representatives. V.I. Code Ann. tit. 18, § 232. The Virgin Islands Delegate is elected at large by majority vote in even-numbered years. 48 U.S.C. § 1712; 48 U.S.C. § 1715.

10. Section 102(a)(8) of UOCAVA requires that States, including the Territory of the Virgin Islands, 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, unless a hardship exemption is obtained pursuant to Section 102(g) of UOCAVA, 42 U.S.C. § 1973ff-1(g). 42 U.S.C. § 1973ff-1(a)(8). The Virgin Islands has not sought or obtained a hardship exemption for any of its 2012 Federal elections.

11. The deadline for transmission of absentee ballots to UOCAVA voters who have requested them at least 45 days before the September 8, 2012 Federal primary election was July 25, 2012.

12. Under Virgin Islands law, this year's candidate qualifying period for the September 8, 2012 primary election for Delegate did not end until August 14, 2012. *See* V.I. Code Ann. tit. 18, § 410(a)(2).

13. The Virgin Islands failed to transmit absentee ballots for the September 8, 2012 Federal primary election to UOCAVA voters who requested them by the deadline of July 25, 2012.

14. The Territory's failure to transmit ballots to UOCAVA voters who requested them by July 25, 2012, the 45th day before the September 8, 2012 Federal primary election, violates Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A).

15. The Virgin Islands recently enacted legislation to move its primary election date to the first Saturday in August. However, the Act specifies that the change in the Territory's primary election date does not take effect until the 2014 primary election. 2012 V.I. Sess. Laws Bill No. 29-0305. The Act's changes to the Territory's primary election calendar will not provide sufficient time between the dates established for candidate qualifying and the deadline for transmission of absentee ballots for the Territory to comply with UOCAVA's 45-day deadline in future Federal primary elections. *See id.*, Section 2 (amending V.I. CODE ANN. tit. 18, §§ 350, 351, 410).

16. On November 6, 2012, the Territory will hold a Federal general election for the Virgin Islands Delegate to the United States House of Representatives. *See* V.I. Code Ann. tit. 18, § 231.

17. The deadline for transmission of absentee ballots to UOCAVA voters who have requested them at least 45 days before the November 6, 2012 Federal general election is September 22, 2012.

18. In the Virgin Islands, to be timely submitted for counting, absentee ballots from UOCAVA voters must be received no later than ten days after the election. V.I. Code Ann. tit. 18, § 665(a). Thus, for the September 8, 2012 Federal primary election, UOCAVA ballots must be received by September 18, 2012. For the November 6, 2012 Federal general election, UOCAVA ballots must be received by November 16, 2012.

19. The Boards of Elections must certify results of an election to the Supervisor of Elections no later than 15 days following a primary or general election. V.I. Code Ann. tit. 18, § 47(9). Thus, the Boards have five days following the deadline for receipt of UOCAVA ballots to certify the results. For the September 8, 2012 Federal primary election, the results must be certified by

September 23, 2012. For the November 6, 2012 Federal general election, the results must be certified no later than November 21, 2012.

20. According to information provided by Territory officials, the Supervisor of Elections requires at least seven to ten days after the certification of the results of the September 8, 2012 Federal primary election to design the general election ballot, have it approved by the Board of Elections, and prepare for its transmission to UOCAVA voters.

21. Therefore, the Territory is unable to transmit ballots for the Federal general election to UOCAVA voters until September 30, 2012, at the earliest. This means that UOCAVA voters will be sent an absentee ballot 37 days or less before the Federal general election.

22. The Territory's inability to transmit official ballots to UOCAVA voters who have requested them by September 22, 2012, the 45th day before the November 6, 2012 Federal general election, will constitute a violation of Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A).

23. An order of this Court requiring Defendants to take corrective action is necessary to protect the rights granted by UOCAVA and to ensure that the Territory's UOCAVA voters will have sufficient opportunity to vote in the September 8 and November 6, 2012 Federal elections, and in future elections for Federal office.

WHEREFORE, the United States respectfully requests that the Court hear this action pursuant to 42 U.S.C. § 1973ff-4; 28 U.S.C. §§ 1345, 2201; and 48 U.S.C. §1612(a), and:

(1) Issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of the Territory of the Virgin Islands to ensure that absentee ballots for the September 8, 2012 Federal primary election and the November 6, 2012 Federal general election are transmitted to

UOCAVA voters 45 days before the election constitutes a violation of 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A); and

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

(a) To take such steps as are necessary to ensure that UOCAVA voters shall have sufficient opportunity to receive, mark, and submit their ballots in time to have them counted in the September 8 and November 6, 2012 Federal elections to remedy the Territory's violation of Section 102(a)(8)(A) of UOCAVA , 42 U.S.C. § 1973ff-1(a)(8)(A);

(b) To take such steps as are necessary to afford UOCAVA voters who are eligible to participate in the Territory's September 8 and November 6, 2012 Federal elections a reasonable opportunity to learn of this Court's order;

(c) To report to the United States concerning the transmission, receipt, and counting of UOCAVA ballots, and related procedures, for the September 8 and November 6, 2012 Federal elections pursuant to this Court's order; and

(d) To take such other steps as are necessary to ensure that the Territory conducts all future Federal elections in full compliance with UOCAVA, including taking any legislative, administrative, or other actions necessary to prevent future violations arising from the Territory's election calendar or other practices of the Territory, and requiring Defendants to provide reports to the United States as to its UOCAVA compliance efforts for future Federal elections.

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

Date: August 31, 2012

RONALD W. SHARPE  
United States Attorney

          /s/ Joycelyn Hewlett            
Joycelyn Hewlett  
Assistant United States Attorney  
Office of the United States Attorney's Office  
United States Courthouse & Federal  
Building  
5500 Veterans Drive, Suite 260  
St. Thomas, Virgin Islands 00802-6424  
Voice: (340) 774-5757  
Facsimile: (340) 776-3474

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

          /s/ Janie Allison Sitton            
T. CHRISTIAN HERREN, JR.  
ABEL GOMEZ  
JANIE (JAYE) ALLISON SITTON  
ERNEST A. MCFARLAND  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
NWB - 7254  
Washington, D.C. 20530  
Telephone: (202) 305-4143  
Facsimile: (202) 307-3961