

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE TERRITORY OF THE VIRGIN ISLANDS;)	CASE NO. 3:12-CV-00069
VIRGIN ISLANDS JOINT BOARDS OF)	
ELECTIONS; BOARD OF ELECTIONS, ST.)	
CROIX DISTRICT; BOARD OF ELECTIONS,)	
ST. THOMAS/ST. JOHN DISTRICT; AND)	<u>CONSENT DECREE</u>
JOHN ABRAMSON, JR., VIRGIN ISLANDS)	
SUPERVISOR OF ELECTIONS, in his official)	
capacity,)	
)	
Defendants.)	
)	

Plaintiff United States of America (“United States”) initiated this action against the Territory of the Virgin Islands (the “Territory”); the Virgin Islands Joint Boards of Elections; the Board of Elections, St. Croix District; the Board of Elections, St. Thomas/St. John District; and the Virgin Islands Supervisor of Elections, John Abramson, Jr., in his official capacity, to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§ 575-89, 123 Stat. 2190, 2318-35 (2009) (“MOVE Act”). The United States alleges violations of UOCAVA arising from the Territory’s failure to transmit absentee ballots to absent uniformed services voters and overseas voters (“UOCAVA voters”) by the 45th day before the September 8, 2012 Federal primary election and its inability to transmit absentee ballots to UOCAVA voters by the 45th day before the November 6, 2012 Federal general election. Without corrective action, UOCAVA voters from

the Virgin Islands will not be provided sufficient time to receive, mark, and submit their ballots in time to have those ballots counted in the Territory's 2012 Federal elections and in all future elections for Federal office.

The United States and Defendants, through their respective counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties share the goal of providing UOCAVA voters with a sufficient opportunity to participate in the September 8 and November 6, Federal elections, and all subsequent elections for Federal office. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the UOCAVA violations alleged by the United States. Accordingly, the United States and Defendants stipulate and agree that:

JURISDICTION

1. This action is brought by the Attorney General on behalf of the United States pursuant to UOCAVA, as amended by the MOVE Act. UOCAVA provides 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.

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4(a), and this Court has jurisdiction of this action pursuant to 42 U.S.C. § 1973ff-4; 28 U.S.C. §§ 1345, 2201; and 48 U.S.C. § 1612(a).

3. 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.

DEFENDANTS

4. Defendant Virgin Islands Joint Boards of Elections is “the policy-making body of the Virgin Islands Elections System.” 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).

5. 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.

6. 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.

7. 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 Virgin Islands 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.*

FEDERAL PRIMARY ELECTION

8. On September 8, 2012, the Territory will hold a Federal primary election for the Virgin Islands Delegate to the United States House of Representatives. *See* 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, 1715.

9. Section 102(a)(8) of UOCAVA requires that States 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.

10. 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.

11. Under Territory 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).

12. 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.

13. 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).

14. 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).¹

¹ The Territory's special election law to fill a vacancy in the position of Delegate also has the potential to create a violation of UOCAVA. Territorial law requires the holding of a special election to fill any vacancy

FEDERAL GENERAL ELECTION

15. 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.

16. 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.

17. 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.

18. 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 therefore 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.

19. According to information provided by Territory officials, the Supervisor of Elections requires at least seven to ten days following the certification of the results of the September 8,

occurring six months or more prior to the next general election. V.I. Code Ann. tit 18, § 21(d)(2). The special election must occur “not less than 30 nor more than 45 days after the date of the occurrence of the vacancy.” *Id.* In that event, the compressed election calendar required by Territorial law may prevent the Virgin Islands from transmitting UOCAVA ballots 45 days before the special election.

2012 Federal primary election to design the Federal general election ballot, have it approved by the Board of Elections, and prepare for its transmission to UOCAVA voters.

20. 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 no earlier than 37 days before the Federal general election.

21. The Territory's inability to transmit 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).

22. In order to avoid the burdens, delays, and uncertainties of litigation and to efficiently and expeditiously promote the parties' shared goal of ensuring that the Territory's UOCAVA voters will have sufficient opportunity to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the September 8, 2012 Federal primary election and the November 6, 2012 Federal general election, the parties agree that this Court should enter an order which, among other remedies extends the deadline for receipt of ballots for the Federal primary election. The parties also agree that the Territory shall take all actions and adopt other permanent measures to ensure compliance with UOCAVA in all future elections for Federal office.

WHEREFORE, the parties having freely given their consent, and the terms of the Consent Decree being fair, reasonable, and consistent with the requirements of UOCAVA, it is hereby ORDERED, ADJUDGED, AND DECREED that:

- (1) Deadline for transmission of absentee ballots for Federal primary election. No later than August 31, 2012, Defendants shall transmit an

absentee ballot for the September 8, 2012 Federal primary election to all UOCAVA voters who requested a ballot by that date.

(2) Outgoing express mail and electronic transmission options for the Federal primary election. For UOCAVA voters who by July 25, 2012 requested to receive their ballot for the September 8, 2012 Federal primary election by mail, Defendants shall send the absentee ballot using an express delivery service. In addition, such voters shall be offered the option of receiving their ballot by email or fax.

(3) Extension of ballot receipt deadline for Federal primary election. The deadline for receipt of ballots from UOCAVA voters for the September 8, 2012 primary election is extended by 7 days, from September 18, 2012, as provided by Territorial law, until September 25, 2012. In addition to accepting validly cast UOCAVA ballots for the September 8, 2012 primary election received by September 18, 2012, in accordance with Territorial law, Defendants shall take all steps necessary to ensure that all timely requested UOCAVA ballots, including Federal and Territory Write-in Absentee Ballots, are counted as validly cast ballots in the September 8, 2012 Federal primary election, provided such ballots are executed and sent by September 8, 2012, received by September 25, 2012, and are otherwise valid.

(4) Deadline for transmission of absentee ballots for Federal general election. No later than October 2, 2012, Defendants shall transmit an

absentee ballot for the November 6, 2012 Federal general election to all UOCAVA voters who requested a ballot by that date.

- (5) Outgoing express mail and electronic transmission options for the Federal general election. For UOCAVA voters who by September 22, 2012 requested to receive their ballot for the November 6, 2012 Federal general election by mail, Defendants shall send the absentee ballot using an express delivery service. In addition, such voters shall be offered the option of receiving their ballot by email or fax.
- (6) Electronic and express mail ballot return and notice. Defendants shall provide all UOCAVA voters eligible to vote in the September 8, 2012 Federal primary election and the November 6, 2012 Federal general election with the option of returning their ballot by email, fax, or express delivery service at no cost to the voter. Defendants shall instruct each UOCAVA voter on how to exercise these return options by no later than August 31, 2012 for the Federal primary election and October 2, 2012 for the Federal general election.
- (7) Ballot counting procedures and notice. To ensure that UOCAVA voters who received two ballots will have their ballot validly counted, Defendants shall establish a procedure providing which ballot shall be counted if both ballots are returned and notify all UOCAVA voters of these rules.
- (8) Deadline for certification of Federal election results. Defendants shall certify the results of the September 8, 2012 Federal primary election

no later than September 28, 2012. Defendants shall certify the results of the November 6, 2012 Federal general election no later than November 21, 2012.

- (9) Training of election officials. Defendants shall provide guidance and training to election officials regarding the requirements of UOCAVA and all relief being imposed under this Consent Decree, in order to enable them to take any action necessary for its implementation.
- (10) Coordination with FVAP on notice. Upon entry of this Consent Decree, Defendants shall notify the Director of the Federal Voting Assistance Program of the United States Department of Defense (“FVAP”) and request assistance in notifying military and other eligible voters of the relief afforded by this agreement, and coordinate with FVAP as necessary to facilitate such notice.
- (11) Press release issuance. Upon the entry of this Consent Decree, Defendants shall take the following steps to give affected UOCAVA voters notice of the contents of this agreement by issuing a press release for immediate release, posted immediately on the Territory’s election information website, and distributed as broadly and immediately as practicable to national and local wire services, to radio and television broadcast stations, and to daily newspapers of general circulation in the Territory. The press release shall also be distributed to the Federal Voting Assistance Program; International Herald Tribune (<http://www.iht.com>); USA Today International

(<http://www.usatoday.com>); Military Times Media Group
(cvinch@militarytimes.com); Overseas Vote Foundation
(<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes
(www.estripes.com), and any other appropriate newspaper or news
media in the Territory of the Virgin Islands. The press release shall, at
a minimum: (a) summarize this order, including a notice that the
deadlines for receipt of ballots for the Federal primary election has
been extended; (b) notify UOCAVA voters that they may choose to
receive their ballot for the September 8, 2012 Federal primary election
by email, fax, or express mail at no cost to the voter; (c) notify
UOCAVA voters that they may return their ballots for the September
8, 2012 Federal primary election and the November 6, 2012 Federal
general election by email, fax, or express mail at no cost to the voter;
and (d) provide appropriate contact information for the Office of the
Supervisor of Elections.

- (12) Reporting on absentee ballots. Defendants shall provide reports
to counsel of record for the United States no later than September 28,
2012 concerning the number of UOCAVA absentee ballots received
and counted for the September 8, 2012 Federal primary election and
no later than December 6, 2012 for the Federal general election. The
reports will set forth the following information in a format agreed
upon by the parties, categorized by absent uniformed services voters
with APO/FPO addresses or non-U.S. street addresses; uniformed

services voters at a street address within the U.S.; and overseas civilian voters:

- a. The number of absentee ballots from UOCAVA voters received by the applicable receipt deadline and counted;
- b. The number of absentee ballots from UOCAVA voters received later than the receipt deadline; and
- c. The number of absentee ballots from UOCAVA voters that were not counted for reasons other than late receipt, and the reasons such ballots were not counted.

(13) Records retention. Defendants shall maintain written records of all actions taken pursuant to this Consent Decree sufficient to document compliance with its terms. Such records shall be made available to the United States upon request.

(14) Future relief. To ensure compliance with UOCAVA in all future elections for Federal office, Defendants shall by December 1, 2013 take all actions and adopt such permanent measures as are necessary to ensure that UOCAVA voters have the full and effective opportunity to vote guaranteed by UOCAVA in all elections for Federal office, 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. The parties shall confer on the progress of these efforts, and Defendants shall provide status reports to the United States by December 1, 2012; June 1, 2013; and December 1, 2013.

Court jurisdiction. The Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree and to ensure compliance with UOCAVA through January 31, 2014. For good cause shown, any party may move to extend the Consent Decree or to reopen the case.

AGREED AND CONSENTED TO, August 31, 2012

For the Plaintiff:

RONALD W. SHARPE
United States Attorney

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

/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

/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

For the Defendants:

VINCENT F. FRAZER, ESQ.
Virgin Islands Attorney General

/s/ Carol Thomas-Jacobs
CAROL THOMAS-JACOBS
Assistant Attorney General
Virgin Islands Department of Justice
34-38 Kronprindsens Gade
G.E.R.S. Complex, Second Floor
St. Thomas, Virgin Islands 00802
Telephone: (340) 774-5666
Facsimile: (340) 776-3494

SO ORDERED this ____ day of _____, 2012.

United States District Judge