



**U.S. Department of Justice**

Office of Legislative Affairs

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Michael R. Pence  
President  
United States Senate  
Washington, DC 20510

Dear Mr. President:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

We hope this information is helpful. Please do not hesitate to contact this office if we may provide additional assistance regarding this or any other matter.

Sincerely,

A handwritten signature in black ink that reads "Stephen E. Boyd" followed by a stylized flourish or mark.

Stephen E. Boyd  
Assistant Attorney General

Enclosure



**U.S. Department of Justice**

Office of Legislative Affairs

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Charles E. Grassley  
President Pro Tempore  
United States Senate  
Washington, DC 20510

Dear Mr. President:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Sincerely,

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Stephen E. Boyd  
Assistant Attorney General

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Mitch McConnell  
Majority Leader  
United States Senate  
Washington, DC 20510

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Assistant Attorney General

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Charles E. Schumer  
Minority Leader  
United States Senate  
Washington, DC 20510

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Stephen E. Boyd  
Assistant Attorney General

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**U.S. Department of Justice**

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Lindsey Graham  
Chairman  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act (“MOVE Act”) of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General’s annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Stephen E. Boyd  
Assistant Attorney General

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**U.S. Department of Justice**

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Dianne Feinstein  
Ranking Member  
Committee on the Judiciary  
United States Senate  
Washington, DC 20510

Dear Senator Feinstein:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act (“MOVE Act”) of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General’s annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Stephen E. Boyd  
Assistant Attorney General

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Nancy Pelosi  
Speaker  
U.S. House of Representative  
Washington, DC 20515

Dear Madam Speaker:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act (“MOVE Act”) of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General’s annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Assistant Attorney General

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Steny Hoyer  
Majority Leader  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Stephen E. Boyd  
Assistant Attorney General

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**U.S. Department of Justice**

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Kevin McCarthy  
Minority Leader  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Leader:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Assistant Attorney General

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*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Jerrold Nadler  
Chairman  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Mr. Chairman:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act (“MOVE Act”) of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General’s annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Stephen E. Boyd  
Assistant Attorney General

Enclosure



**U.S. Department of Justice**

Office of Legislative Affairs

*Office of the Assistant Attorney General*

*Washington, D.C. 20530*

**MAR 21 2019**

The Honorable Doug Collins  
Ranking Member  
Committee on the Judiciary  
U.S. House of Representatives  
Washington, DC 20515

Dear Congressman Collins:

Pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") of 1986, 52 U.S.C. §§ 20301-20311, as amended by the Military and Overseas Voter Empowerment Act ("MOVE Act") of 2009, Pub. L. No. 111-84, Subtitle H, § 587, we are pleased to transmit to you the Attorney General's annual report. Due to the lapse of appropriations beginning on December 21, 2018, the Department of Justice (Department) faced resource and personnel constraints that inhibited timely submission of the enclosed report. We apologize for the delay of our transmittal.

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Stephen E. Boyd  
Assistant Attorney General

Enclosure

**United States Department of Justice**  
**Uniformed and Overseas Citizens Absentee Voting Act**  
**Annual Report to Congress**  
**2018**

**I. Summary**

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986, 52 U.S.C. §§ 20301-20311, 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), requires States to afford military and overseas voters a meaningful opportunity to register and vote absentee in elections for Federal office. Protecting the voting rights of military and overseas voters remains one of the highest priorities of the Department of Justice (“Department”). This report describes the Department’s litigation and compliance monitoring work in 2018 to enforce this important statute.

In the 2018 Federal election year, the Department devoted significant resources to monitoring UOCAVA compliance throughout the country leading up to the primary elections, in advance of special congressional elections, and in the months and weeks leading up to the general election. In this cycle, Arizona sought an undue-hardship waiver of the 45-day ballot transmission deadline from the Department of Defense (“DOD”), pursuant to UOCAVA, 52 U.S.C. § 20302(g). Arizona withdrew their waiver request prior to a determination by the Department of Defense, and the Department of Justice subsequently filed and settled an enforcement action to resolve the issue raised by the waiver application.

In preparation for its nationwide compliance monitoring program for the 2018 Federal election cycle, the Department wrote to all chief State election officials<sup>1</sup> early in 2018 to remind them of their UOCAVA responsibilities and to request teleconferences to discuss their preparations for the primary elections. As in prior Federal election cycles, we requested that all State election offices monitor the transmission of absentee ballots to its military and overseas voters, and provide confirmation to the Department that ballots requested by the 45th day prior to the Federal elections were transmitted by that date. In advance of the UOCAVA deadline for the general election, we reached out again to all State election offices to inquire whether plans were in place to ensure timely transmission of the UOCAVA ballots for the Federal general election. Throughout the election cycle, the Department monitored ongoing ballot access litigation, election contests, and other events that could potentially delay ballot certifications and the timely transmission of ballots to military and overseas voters. We communicated regularly with election officials in a number of States to discuss available measures they could take to avoid ballot transmission delays wherever possible, and to evaluate any need to pursue enforcement action. There were also a number of special elections held in 2018 to fill Congressional vacancies. The Department closely monitored the scheduling of these elections, and requested that States confirm to the Department that they timely transmitted UOCAVA ballots for the special elections. As noted, our monitoring resulted in additional enforcement work by the

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<sup>1</sup> UOCAVA defines “State” to include the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa. 52 U.S.C. § 20310(6). Consequently, our general references in this report to the phrase “State” include the District of Columbia and the enumerated territories.

Department with one State, Arizona, to ensure that the special election ballots were timely-transmitted to their military and overseas voters. The Department also obtained agreements that ensure that U.S. citizens from the States of Wisconsin and New York who reside overseas temporarily are afforded the full voting protections guaranteed by UOCAVA.

The Department also prevailed in a case on appeal to defend the constitutionality of UOCAVA. In our 2010 UOCAVA litigation against the State of New York, the Department monitored the court-ordered schedule for conducting the 2018 Federal elections to ensure continued UOCAVA compliance.

Copies of the significant recent court orders and briefs referenced herein are attached to this report.

## **II. Background**

UOCAVA, enacted in 1986, requires that States and Territories allow American citizens who are active duty members of the United States uniformed services and merchant marine, their spouses and dependents, and American citizens residing outside the United States to register and vote absentee in elections for Federal offices. UOCAVA was strengthened significantly in 2009 when Congress passed the MOVE Act, which expanded the protections for individuals eligible to vote under its terms. One of the key provisions added by the MOVE Act is the requirement that States transmit absentee ballots to military and overseas voters no later than 45 days before an election for Federal office when the request has been received by that date. 52 U.S.C. § 20302(a)(8)(A).

The Secretary of Defense is the Presidential designee with primary responsibility for implementing the Federal functions mandated by UOCAVA, and the Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out the provisions of UOCAVA. 52 U.S.C. § 20301(a); 52 U.S.C. § 20307(a). The Attorney General has assigned responsibility for enforcement of UOCAVA to the Civil Rights Division. Since UOCAVA was enacted in 1986, the Division has initiated and resolved numerous cases to enforce UOCAVA. A case list and selected documents are available at <http://www.justice.gov/crt/about/vot/litigation/caselist.php>.

Under the MOVE Act amendments, UOCAVA requires that the Attorney General submit an annual report to Congress by December 31 of each year on any civil action brought under the Attorney General's enforcement authority under UOCAVA during the preceding year. 52 U.S.C. § 20307(b). As detailed in its prior reports to Congress, the Department has engaged in extensive enforcement of the MOVE Act's requirements since they went into effect for the 2010 general election. We apologize for our delay in submitting the 2018 UOCAVA report, which was on-track to be timely submitted prior to the lapse of appropriations on December 21, 2018. Absent the Department's funding and activity constraints, the report would have been timely.

## **III. UOCAVA Enforcement Activity by the Attorney General in 2018**

### **A. Civil Actions Filed in 2018 to Enforce UOCAVA**

**United States v. Arizona**: On February 14, 2018, the Department filed a lawsuit against the State of Arizona and the Arizona Secretary of State, alleging UOCAVA violations

arising from the election calendar for the special primary election to fill the seat of the U.S. Representative in Congress from the State's Eighth Congressional District. *United States v. Arizona*, 2:18-cv-505 (D. Az.). Under the truncated election schedule prescribed by state law, Arizona could not transmit absentee ballots to UOCAVA voters 45 days in advance of the special primary election. The case was resolved by a consent decree filed simultaneously with the complaint and entered by the Federal district court on February 15, 2018. To ensure UOCAVA voters sufficient time to receive and submit their absentee ballots in time to be counted, the consent decree required Arizona to accept UOCAVA ballots returned by mail for an additional ten days following the special primary election, so long as the ballots were executed and sent by election day and were otherwise valid. The consent decree also required the State to provide affected voters with notice of expedited ballot return options. The consent decree also included measures, if needed, to ensure timely UOCAVA ballot transmittals for the April 24, 2018 special general election, along with notice and reporting requirements related to UOCAVA ballots. In addition, it specified that the State would take action as necessary to ensure UOCAVA compliance in future Federal special elections, including proposing state legislation and taking any administrative actions necessary to remedy potential future violations arising from Arizona's statutorily imposed special election calendar.

On May 16, 2018, Arizona adopted legislation that revised the state election code to enlarge the timeline for special elections to fill vacancies for U.S. Representative in Congress. The election calendar prescribed by the revised statute allows election officials to complete all the pre-election steps necessary to timely transmit ballots to UOCAVA voters.

**United States v. Wisconsin:** On June 19, 2018, the Department filed a lawsuit against the State of Wisconsin and Wisconsin election officials to resolve violations of UOCAVA arising from the exclusion under state law of certain overseas U.S. citizens from the full set of voting protections that UOCAVA guarantees. *United States v. Wisconsin*, 3:18-cv-00471 (W.D. Wis. 2018). Specifically, Wisconsin law does not permit U.S. citizens who are residing temporarily outside of the United States to receive an absentee ballot electronically or use a Federal Write-In Absentee Ballot for Federal elections as UOCAVA requires. The case was resolved by a consent decree filed simultaneously with the complaint and entered by the Federal district court on June 20, 2018. The consent decree required Wisconsin to afford all UOCAVA voters, including its temporary overseas voters, the option to receive absentee ballots electronically and to use the Federal Write-In Absentee Ballot for the 2018 federal election cycle in accordance with UOCAVA. The consent decree also included notice and reporting requirements related to implementation of its terms. In addition, it specified that the State would take any necessary actions to ensure temporary overseas voters receive full UOCAVA protections in future Federal elections, including proposing state legislation and taking any administrative actions necessary to achieve compliance.

## **B. Litigation to Defend the Constitutionality of UOCAVA**

**Segovia v. United States:** The Department prevailed in its defense of the Federal defendants named in *Segovia v. United States*, No. 16-4240 (7th Cir.), *cert. denied*, No.

17-1463 (U.S.), a case that included a challenge to the constitutionality of UOCAVA. Plaintiffs, former Illinois residents now residing in the territories, filed suit in November 2015 against local election officials in Illinois as well as the United States and the Department of Defense, asserting equal protection and due process challenges to UOCAVA and the Illinois law governing voting by military and overseas voters.

In two rulings issued on August 23 and October 28, 2016, the United States District Court for the Northern District of Illinois rejected the plaintiffs' claims and dismissed the case. The plaintiffs appealed to the United States Court of Appeals for the Seventh Circuit, and the Department filed a brief on June 26, 2017 and participated in oral argument on September 15, 2017, reiterating arguments made to the district court that the plaintiffs lacked standing and that UOCAVA is constitutional.

In an opinion issued January 18, 2018, the Seventh Circuit concluded that the plaintiffs lacked standing to challenge UOCAVA, and directed the district court to dismiss the constitutional challenge. After the plaintiffs filed a petition for a writ of certiorari in the Supreme Court of the United States and the Department filed a brief in opposition, the Supreme Court denied certiorari on October 9, 2018.

### **C. Activity in Other UOCAVA Litigation**

**United States v. New York:** In *United States v. New York*, 1:10-cv-1214 (N.D.N.Y.), the Department's lawsuit against New York for violating UOCAVA in the 2010 Federal general election, the court entered a supplemental remedial order requested by the State of New York at the end of last year setting the election calendar to govern the 2018 Federal elections. The court's order superseded provisions of New York law pertaining to the 2018 election calendar to ensure UOCAVA compliance for the June 26, 2018, Federal primary election and November 6, 2018, Federal general election.

In 2012, after New York failed to enact legislation to modify its election calendar to cure the structural issues that contributed to New York's late transmission of UOCAVA ballots in the 2010 Federal general election, the court granted the Department's motion for supplemental relief to alter the election calendar. The court entered a permanent injunction and ordered a modification of New York's Federal primary election date from September to June, setting the 2012 Federal primary election for June 26, 2012. The court further ordered that future Federal primary elections would be held on the fourth Tuesday in June, unless and until New York enacted legislation resetting the Federal primary date for one that complies fully with UOCAVA and is approved by the court.

The State has yet to enact legislation to alter the September Federal primary election date set forth in state law, and the court has entered calendars to govern each of the Federal election cycles since its original remedial order.

### **D. Other Enforcement Activity to Obtain UOCAVA Compliance**

**New York:** The Department worked closely with the State of New York to ensure that all of the State's overseas U.S. citizens are afforded the voting guarantees provided by UOCAVA. Under New York's procedures at that time, U.S. citizens residing overseas

who indicated an intent to return to New York were excluded from certain UOCAVA protections, including the ability to receive the ballot electronically and to have the ballot sent by the 45<sup>th</sup> day prior to a Federal election. UOCAVA protections are the same for overseas citizens intending to return to the United States as they are for overseas citizens whose return is uncertain. Following the Department's discussions with the State, the New York State Board of Elections promulgated new regulations harmonizing state procedures with UOCAVA requirements, thus ensuring that the State's overseas U.S. citizens, including those indicating an intent to return to the State at some point, were entitled to all UOCAVA protections. *See* N.Y. Comp. Codes R. & Regs. tit. 9, §§ 6219.1-.3 (2018).

# ATTACHMENTS

**III. UOCAVA Enforcement Activity by the  
Attorney General in 2018**

**A. Civil Actions Filed in 2018 to Enforce UOCAVA**

**United States v. Arizona**

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 Plaintiff,

22 v.

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

27 Defendants.

28 **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)  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

v.

The State of Arizona; and  
Michele Reagan, Secretary of  
State of Arizona, in her  
official capacity,

Defendants.

Case No.:

**CONSENT DECREE**

Plaintiff United States of America initiated this action against the State of Arizona (“State”); and Michele Reagan, the Secretary of State of Arizona, in her official capacity (collectively “Defendants”), to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20301 *et seq.* The United States’ Complaint alleges a violation of UOCAVA arising from the Defendants’ inability to transmit final or corrected absentee ballots to some of Arizona’s absent uniformed services voters and overseas voters (“UOCAVA voters”) by the 45th day before the February 27, 2018 special primary election for the United States House of Representatives, as required by Section 102(a)(8)(A) of UOCAVA, 52 U.S.C. § 20302(a)(8).

The United States and Defendants, through their respective counsel, have conferred

1 and agree that this action should be settled without the delay and expense of litigation. The  
2 parties share the goal of providing eligible UOCAVA voters with sufficient opportunity  
3 under Federal law to receive, cast and have their absentee ballots counted in the February  
4 27, 2018 special primary election for Arizona's Eighth Congressional District. The parties  
5 recognize that the Defendants' inability to transmit final or corrected absentee ballots to  
6 the UOCAVA voters at least 45 days before the special primary election resulted from the  
7 truncated special election schedule established by state law, specifically the application of  
8 deadlines for challenges to candidates' nominating signature petitions, and did not result  
9 from willful or unintentional negligence by the state and local election officials responsible  
10 for implementing federal and state election laws. The parties have negotiated in good faith  
11 and agree to the entry of this Consent Decree as an appropriate resolution of the UOCAVA  
12 violation asserted by the United States. Accordingly, the United States and Defendants  
13 stipulate and agree that:

14 1. This action is brought by the Attorney General on behalf of the United States of  
15 America under UOCAVA. 52 U.S.C. § 20301 *et seq.* UOCAVA provides that UOCAVA  
16 voters shall be permitted "to use absentee registration procedures and to vote by absentee  
17 ballot in general, special, primary, and runoff elections for Federal office." 52 U.S.C.  
18 § 20302.

19 2. The Attorney General is authorized to enforce the provisions of UOCAVA, 52  
20 U.S.C. § 20307, and this Court has jurisdiction of this action pursuant to 52 U.S.C. § 20307  
21 and 28 U.S.C. §§ 1345 and 2201.

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

25 4. Defendant Michele Reagan is the Arizona Secretary of State and is sued in her  
26 official capacity. The Arizona Secretary of State is the chief state election officer and  
27 responsible for the coordination of state responsibilities under UOCAVA. Ariz. Rev. Stat.  
28 § 16-142.

1           5. Section 102(a)(8)(A) of UOCAVA requires that states transmit validly requested  
2 ballots to UOCAVA voters not later than 45 days before an election for Federal office  
3 when the request is received at least 45 days before the election. 52 U.S.C.  
4 § 20302(a)(8)(A).

5           6. Pursuant to the Arizona election code, when a vacancy occurs in the office of a  
6 representative in Congress more than six months prior to the next general election, the  
7 governor shall call a special primary election and special general election for at least 80  
8 and no more than 90 days from the date of the occurrence of the vacancy. Ariz. Rev. Stat.  
9 § 16-222(B). On December 8, 2017, Representative Trent Franks resigned from Congress.  
10 Representative Franks represented the Eighth Congressional District, which is located  
11 entirely within Maricopa County. The governor set February 27, 2018 as the date for the  
12 special primary election and April 24, 2018 as the date for the special general election.

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

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

21           9. On or about January 8, 2018, recognizing that petition challenges might occur  
22 after the deadline to transmit UOCAVA ballots, the Defendants contacted the Department  
23 of Defense and inquired about the possibility of obtaining a waiver of UOCAVA's 45-day  
24 transmission requirement under 52 U.S.C. § 20302(g). On or about January 10, 2018, the  
25 Department of Defense contacted the Defendants and explained that the state was not  
26 eligible to seek a UOCAVA waiver under the circumstances presented.  
27  
28

1           10. On January 12, 2018, the day before the UOCAVA transmission deadline,  
2 Maricopa County election officials transmitted ballots (the “original ballots”) to all eligible  
3 UOCAVA voters who had requested them by that date.

4           11. Because of the possibility that changes to the ballot could result from challenges  
5 to a candidate’s nominating petition, Maricopa County election officials included a notice  
6 with the original ballots explaining that the list of candidates was not yet final due to  
7 potential candidate nomination petition challenges, and the final list of candidates would  
8 not be confirmed until January 25, 2018. The notice advised that an updated official ballot  
9 would be sent on that date. It further advised that voters could choose to vote the enclosed  
10 ballot, or wait for the updated ballot; but, if they voted the enclosed ballot and cast their  
11 vote for a candidate who was subsequently disqualified, they would not be able to vote a  
12 second ballot or change their vote. A copy of this notice is attached as Exhibit 1.

13           12. Some of the UOCAVA voters to whom original ballots were sent on January  
14 12, 2018 received Republican Party, Libertarian Party, or Green Party ballots. No  
15 challenges were ultimately filed by the January 18, 2018 deadline to the candidates on the  
16 Republican Party, Libertarian Party, or Green Party ballots. Accordingly, on January 19,  
17 2018, Maricopa County election officials sent a second notice to those voters explaining  
18 that no candidate petition challenge had been filed for the Republican, Libertarian or Green  
19 Party nomination. Therefore, eligible UOCAVA voters were notified that the ballot  
20 transmitted on January 12, 2018 had not changed and voters should cast that original ballot.  
21 The notice further advised that the UOCAVA voters should return their voted ballot so that  
22 it is received no later than 7:00 p.m. on election day, February 27, 2018. A copy of this  
23 notice is attached as Exhibit 2.

24           13. Some of the UOCAVA voters to whom original ballots were sent on January  
25 12, 2018 received Democratic Party ballots. These ballots (the “original Democratic  
26 ballots”) included the names of three candidates who had filed timely nominating petitions.  
27 Challenges were ultimately filed by January 18, 2018 to two of these three candidates. On  
28 January 23, 2018, a challenge to one of the Democratic Party candidates was sustained by

1 a state court, and the candidate was ordered removed from the ballot. On January 23, 2018,  
2 Maricopa County election officials sent corrected ballots reflecting this change (the  
3 “corrected Democratic ballots”) to UOCAVA voters who had received original Democratic  
4 ballots. Along with the corrected Democratic ballots, election officials included a notice  
5 explaining that one of the candidates listed on the ballot mailed on January 12, 2018 had  
6 been removed pursuant to a court order. Therefore, the notice explained that the voter  
7 should cast a corrected ballot for the Democratic Party nominee, which was enclosed with  
8 the notice. The notice further advised the UOCAVA voters to vote the corrected ballot  
9 included with the notice and to return it so that it is received by 7:00 p.m. on Election Day,  
10 February 27, 2018. A copy of this notice is attached as Exhibit 3.

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

15 15. Under Arizona law, ballots returned by UOCAVA voters must be received by  
16 7:00 p.m. on Election Day to be counted. *See* Ariz. Rev. Stat. §§ 16-547(C) and 16-551(C).  
17 Accordingly, in order to be counted, the corrected Democratic ballots must be received by  
18 7:00 p.m. on February 27, 2018, which is 35 days after the date of transmittal of the  
19 corrected ballots.

20 16. The truncated special election schedule established by Arizona law precluded  
21 the Defendants from transmitting final or corrected ballots to UOCAVA voters receiving  
22 a Democratic Party ballot by the 45th day before the February 27, 2018 special primary  
23 election for the House of Representatives, as required by Section 102(a)(8)(A) of  
24 UOCAVA, 52 U.S.C. § 20302(a)(8).

25 17. Furthermore, the notice sent to all UOCAVA voters for all parties on January  
26 12 along with the original ballots encouraged voters to await further notice to submit their  
27 ballots, and to await receipt of an “updated official ballot.” However, UOCAVA voters  
28 who received Republican Party, Libertarian Party, or Green Party ballots were never sent

1 an “updated official ballot,” and a second notice advising that there was no change to the  
2 ballot was not transmitted until January 19, 2018. To be counted, these original ballots  
3 must be received by February 27, 2018, which is 39 days after the date of transmittal of the  
4 second notice. As a result, the Defendants were unable to provide these UOCAVA voters  
5 the meaningful opportunity to cast a ballot that UOCAVA’s 45-day transmission deadline  
6 seeks to ensure. 52 U.S.C. § 20302(a)(8).

7 18. By agreeing to this consent decree, the Defendants seek to ensure that  
8 UOCAVA voters are not prejudiced because of the truncated special election schedule  
9 required by Arizona law.

10 19. To avoid the burdens, delays, and uncertainties of litigation and to efficiently  
11 and expeditiously promote the parties’ shared goal of ensuring that Arizona’s UOCAVA  
12 voters will have sufficient opportunity under Federal law to receive, mark and return their  
13 absentee ballots in time to be counted for the February 27, 2018 special primary election  
14 for the House of Representatives, the parties agree that this Court should enter an order as  
15 set forth below.

16 20. The parties reserve the right to modify this agreement as necessary, subject to  
17 approval from the Court. For example, Arizona law allows for the possibility of an  
18 automatic recount in a close election. Ariz. Rev. Stat. § 16-661. The parties will confer  
19 promptly after the special primary election is held and, if necessary, seek appropriate  
20 modification of this decree or other relief from the Court.

21  
22 WHEREFORE, the parties having freely given their consent, and the terms of the  
23 Decree being fair, reasonable, and consistent with the requirements of UOCAVA, it is  
24 hereby ORDERED, ADJUDGED, and DECREED by the Court that:

- 25  
26 (1) To ensure that all eligible UOCAVA voters will have sufficient  
27 opportunity to receive absentee ballots they have requested and to  
28 submit marked absentee ballots in time to be counted for the

1 February 27, 2018 special primary election for the House of  
2 Representatives, the Defendants shall ensure that Maricopa  
3 County election officials count: (a) all those original ballots  
4 transmitted to UOCAVA voters on January 12, 2018, but only if  
5 that ballot is the only ballot returned by the UOCAVA voter, (b)  
6 all those corrected ballots transmitted to UOCAVA voters on  
7 January 23, 2018, and (c) any Federal Write-In Absentee Ballots.  
8 In order for any ballot described in sections (a) – (c) above to be  
9 counted, the ballot must be otherwise valid under state law and  
10 meet the following transmittal criteria:

11 a. For ballots returned by postal or express mail: the ballot  
12 must be *executed and sent* by February 27, 2018 and be  
13 *received* by March 9, 2018 at 12:00 Noon Arizona time.

14 b. For ballots returned via any electronic submittal, including  
15 e-mail, facsimile, or electronic upload: the ballot must be  
16 received by February 27, 2018 at 7:00 p.m. Arizona time.

17 (2) Defendants shall take such steps as are necessary to afford those  
18 eligible UOCAVA voters who have not already returned a final  
19 ballot for this election (i.e., a Republican, Green, or Libertarian  
20 ballot, or a corrected Democratic ballot) an opportunity to learn of  
21 this Court's order and to ensure that all such voters receive  
22 appropriate instructions explaining ballot return deadlines and the  
23 options and procedures for returning a ballot. Maricopa County  
24 election officials have valid email addresses for all 375 UOCAVA  
25 voters eligible to vote in this special primary election and will  
26 transmit such notice by email no later than the next business day  
27 following entry of this Order by the Court. If any such emailed  
28 notice to a voter is returned as undeliverable, the notice shall be

1 sent to the voter by United States Postal Service Express  
2 Overnight mail or other overnight delivery method if the voter is  
3 overseas, or by postal mail if the voter is not overseas. Such notice  
4 shall, at minimum: (a) ask UOCAVA voters who received  
5 Democratic Party ballots to confirm that they have received  
6 corrected Democratic ballots and no impediments exist for a  
7 timely return of the corrected ballot; (b) ask UOCAVA voters who  
8 received Republican Party, Libertarian Party, or Green Party  
9 ballots to confirm that they have received their original ballot and  
10 the additional notice regarding its finality and no impediments  
11 exist for a timely return of the original ballot; (c) explain the  
12 relevant deadlines for executing and returning all original and  
13 corrected ballots by electronic upload, facsimile, and postal mail;  
14 (d) explain to any voter who identifies impediments to a timely  
15 return of the ballot that it may be returned by the electronic upload  
16 and facsimile return options, or by United States Postal Service  
17 Express Overnight mail or other overnight delivery method with  
18 prepaid postage; and (e) provide appropriate contact information  
19 for additional assistance. A copy of Maricopa County election  
20 officials' planned notice is attached as Exhibit 4.

21 (3) The Defendants shall provide a report no later than two business  
22 days after entry of this Order by the Court in an agreed-upon  
23 format to the United States Department of Justice, confirming that  
24 each UOCAVA voter has been provided the individualized notice  
25 described in paragraph (2) above. If any UOCAVA voters have  
26 not been contacted by that date, Defendants shall continue to  
27 attempt to contact such voters and shall provide the United States  
28 updates on an agreed upon schedule.

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(4) Defendants shall file a report with this Court no later than March 31, 2018, in a format agreed upon by the parties, concerning the number of UOCAVA ballots received and counted for the February 27, 2018 special primary election.

(5) If necessary to ensure compliance with UOCAVA's 45-day transmission deadline of March 10 for the April 24, 2018 special general election, election results for the February 27, 2018 special primary election may be formally canvassed and certified in accordance with state law at any time prior to March 9, 2018 if the number of outstanding absentee ballots from UOCAVA voters that have not been returned could not mathematically alter the outcome of the election, subject to amendment, re-canvass, or re-certification to later add any votes from UOCAVA ballots accepted in accordance with this Court's Order. Thus, under the circumstances described in this paragraph, Maricopa County election officials may transmit UOCAVA ballots for the April 24, 2018 special general election notwithstanding the possibility that the results of the special primary election may be subsequently re-canvassed and re-certified. These procedures are designed to ensure that state and county election officials can maintain existing canvassing and certification deadlines for the special primary election and can timely transmit UOCAVA ballots to voters by the March 10, 2018 45-day deadline before the April 24, 2018 special general election.

(6) If, under the terms of paragraph (5), the results of the primary election are canvassed and certified before March 9, 2018 and there are outstanding UOCAVA ballots that have not been received for a particular party's primary, and the canvassed and

1 certified results for that party's primary show a margin sufficiently  
2 small so as to require an automatic recount under Ariz. Rev. Stat.  
3 § 16-661, the recount may proceed immediately under the  
4 procedures required by state law, and the results of the recount  
5 shall include all UOCAVA ballots required to be counted by this  
6 Order.

7 (7) If the transmission of UOCAVA ballots for the special general  
8 election is delayed up to five days beyond the March 10, 2018  
9 deadline due to a delay in canvassing and certifying, or completing  
10 an automatic recount of, the results of the special primary election  
11 due to the extension of the ballot receipt deadline effected by this  
12 Order, the deadline for receipt of special general election ballots  
13 returned by UOCAVA voters by postal or express mail, and  
14 executed and sent by April 24, 2018, shall be extended beyond  
15 April 24, 2018 by the number of days past March 10, 2018 that the  
16 ballots were transmitted. No later than two business days  
17 following the transmission of UOCAVA ballots for the special  
18 general election, the Defendants shall provide a report to the  
19 United States Department of Justice specifying the date of  
20 transmission of UOCAVA ballots for the special general election,  
21 the number of UOCAVA ballots transmitted by method of  
22 transmission, and a copy of any notice of receipt deadline  
23 extension provided to UOCAVA voters.

24 (8) In the event the ballot receipt deadline for the special general  
25 election is extended beyond April 24, 2018 under the terms of the  
26 preceding paragraph, election results for the special general  
27 election may be formally canvassed and certified in accordance  
28 with state law at any time prior to the ballot receipt deadline if the

1 number of outstanding absentee ballots from UOCAVA voters  
2 could not mathematically alter the outcome of the election, subject  
3 to amendment or re-certification to later add any votes from  
4 UOCAVA ballots accepted in accordance with this Court's Order.

5 (9) Should it at any time appear that, due to a delay in canvassing and  
6 certifying, or completing an automatic recount of, the results of the  
7 special primary election due to the extension of the ballot receipt  
8 deadline effected by this Order, Maricopa County election  
9 officials will be unable to transmit UOCAVA ballots for the  
10 special general election by March 15, 2018, the Defendants shall  
11 promptly notify the United States of the circumstances causing the  
12 expected delay, and the parties shall meet and confer to discuss  
13 appropriate modification of this Order and other necessary relief  
14 from this Court, such as express delivery and return of UOCAVA  
15 ballots, alternative transmission methods for UOCAVA ballots,  
16 additional notice to UOCAVA voters, and/or other appropriate  
17 remedial measures.

18 (10) Defendants shall take such actions as are necessary to assure that  
19 UOCAVA voters shall have a fair and reasonable opportunity to  
20 participate in future Federal elections, including proposing  
21 legislation and taking any administrative actions needed to fully  
22 remedy potential UOCAVA violations arising from Arizona law  
23 governing the State's special election calendar. The parties agree  
24 to confer on the progress of these efforts, and Defendants shall  
25 provide a status report to the United States Department of Justice  
26 by June 30, 2018.

27 The Court shall retain jurisdiction over this action through September 30, 2018, to  
28 enter such further relief as may be necessary for the effectuation of the terms of this

1 Consent Decree, including entry of such other relief as may be necessary to abate any  
2 violation of UOCAVA.

3 The undersigned agree to entry of this Consent Decree:  
4

5 For the Plaintiff United States of America:  
6

7 JOHN M. GORE  
8 Acting Assistant Attorney General  
9 Civil Rights Division

10 /s/ David G. Cooper

11 T. CHRISTIAN HERREN, JR.  
12 ROBERT S. BERMAN  
13 DAVID G. COOPER (NY Bar #4683371)  
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Date: February 14, 2018

1 For the Defendants State of Arizona and Michele Reagan, Secretary of State of Arizona:

2 MARK BRNOVICH  
3 Attorney General of Arizona

4  
5 /s/ Joseph E. La Rue  
6 JOSEPH E. LA RUE (AZ Bar #031348)  
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Date: February 14, 2018

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SO ORDERED this \_\_\_\_ day of February, 2018.

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United States District Judge

# EXHIBIT 1

**NOTICE: THIS MAY NOT BE THE FINAL LIST OF CANDIDATES FOR THIS RACE. THE FINAL LIST OF CANDIDATES WILL NOT BE CONFIRMED UNTIL JANUARY 25, 2018.**

This ballot is being sent 45 days before Election Day as mandated by the federal Military and Overseas Voter Empowerment Act (MOVE Act), Public Law 111-84, 123 Stat. 2190. HOWEVER, be aware the deadline for candidates to file petition was January 10, the Arizona candidate challenge process deadline is not until January 18, and the courts may take as long as 5 days after this deadline to decide any challenge cases. Therefore, candidates will not be confirmed until January 25, 2018. Because of this uncertainty, we will be sending an updated official ballot, on this date. You may choose to wait for this updated ballot, or you may vote the enclosed ballot. However, be aware that if you choose to vote this ballot, and the candidate for which you vote is disqualified during the challenge period, we will not be able to count a second ballot or change your vote.

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**AVISO: PUEDE SER QUE ESTA NO SEA LA LISTA FINAL DE CANDIDATOS PARA ESTA CONTIENDA. LA LISTA FINAL DE CANDIDATOS NO SERÁ CONFIRMADA HASTA EL 25 DE ENERO DE 2018.**

Esta boleta se está enviando 45 días antes del Día de la Elección de acuerdo con lo estipulado por la ley federal Military and Overseas Voter Empowerment Act (MOVE Act), Ley Pública 111-84, 123 Stat. 2190. SIN EMBARGO, tenga en cuenta que la fecha límite para que los candidatos presenten una petición fue el 10 de enero, la fecha límite del proceso de impugnación de los candidatos de Arizona no es hasta el 18 de enero, y los tribunales pueden durar hasta 5 días después de esta fecha límite para decidir cualquier caso de impugnación. Por lo tanto, los candidatos no serán confirmados hasta el 25 de enero de 2018. Debido a esta incertidumbre, estaremos enviando una boleta actualizada en esta fecha. Usted puede optar por esperar por esta boleta actualizada o votar en la boleta adjunta. Sin embargo, tenga en cuenta que, si usted decide votar en esta boleta, y el candidato por el que usted vota es descalificado durante el período de impugnación, no podremos contar una segunda boleta o cambiar su voto.

# EXHIBIT 2

Dear Voter,

You were sent a ballot for the special election for U.S. Representative in Congressional District 8 on January 13, 2018, in compliance with the federal Military and Overseas Voter Empowerment Act, Public Law 111-84, 123 Stat. 2190. This notice is to inform you that the time period for candidate challenges passed on January 18, and no candidate was challenged. Therefore, **the candidates on the ballot you received are considered final. Please vote that ballot and return it to the Maricopa Elections Department so that it is received no later than 7:00 p.m. on Election Day, February 27, 2018.** Per state law, any ballots received after 7:00 p.m. February 27, 2018, cannot be counted. If you have any questions, contact us at [www.maricopa.vote](http://www.maricopa.vote) or (602) 506-1511.

Estimado Votante:

Se le envió una boleta para la elección especial del Representante de los Estados Unidos en el Distrito 8 del Congreso el 13 de enero de 2018, en cumplimiento con el Acto de Empoderamiento de Votantes Federales y Militares en el Extranjero, Ley Pública 111-84, 123 stat. 2190. Este aviso es para informarle que el período de tiempo para la impugnación de candidatos pasó el 18 de enero, y ningún candidato fue impugnado. **Por lo tanto, los candidatos en la boleta que recibió se consideran definitivos. Por favor vote esa boleta y devuélvala al Departamento de Elecciones de Maricopa para que sea recibida a más tardar a las 7:00 p. m. el Día de las Elecciones, 27 de febrero de 2018.** Según la ley estatal, cualquier boleta recibida después de las 7:00 p. m. del 27 de febrero de 2018, no puede ser contada. Si tiene alguna pregunta, contáctenos en [www.maricopa.vote](http://www.maricopa.vote) o (602) 506-1511.

# EXHIBIT 3

Dear Voter,

You were sent a ballot for the special election for U.S. Representative in Congressional District 8 on January 12, 2018, in compliance with the federal Military and Overseas Voter Empowerment Act, Public Law 111-84, 123 Stat. 2190. However, the candidate challenge period had not yet passed under Arizona state law. This notice is to inform you that due to a court decision that there were insufficient signatures on his petitions, **GENE SCHARER is no longer a candidate for this office.**

Enclosed is a revised ballot. **Please disregard the ballot you previously received, VOTE THIS BALLOT, and return it to the Maricopa Elections Department following the instructions provided so that it is received no later than 7:00 p.m. on Election Day, February 27, 2018.** Per state law, any ballots received after 7:00 p.m. February 27, 2018, cannot be counted. If you have any questions, contact us at [milos@risc.maricopa.gov](mailto:milos@risc.maricopa.gov) or (602) 506-1511.

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Estimado Votante:

Se le envió una boleta para la elección especial para Representante de los Estados Unidos en el Distrito 8 del Congreso el 12 de enero de 2018, en cumplimiento con el Acto de Empoderamiento de Votantes Federales y Militares en el Extranjero, Ley Pública 111-84, 123 stat. 2190. Sin embargo, el periodo para la impugnación de candidatos aún no había pasado según la Ley Estatal de Arizona. Este aviso es para informarle que debido a una decisión judicial no hubo suficientes firmas en sus peticiones, **GENE SCHARER ya no es un candidato para este puesto.**

Adjunto se encuentra la boleta modificada. **Por favor, ignore la boleta que recibió anteriormente, VOTE ESTA BOLETA y devuélvala al Departamento de Elecciones de Maricopa siguiendo las instrucciones proporcionadas para que se reciba a más tardar a las 7:00 p. m. el Día de la Elección, el 27 de febrero de 2018.** Según la ley estatal, las boletas recibidas después de las 7:00 p. m. del 27 de febrero de 2018 no pueden contarse. Si tiene alguna pregunta, contáctenos en [milos@risc.maricopa.gov](mailto:milos@risc.maricopa.gov) o (602) 506-1511.

# EXHIBIT 4

**FOR: REP, GRN, LBT.**

**Subject line: URGENT RESPONSE REQUESTED**

**OFFICIAL ELECTION NOTICE**

**NOTICE FROM THE MARICOPA COUNTY RECORDER AND REQUEST FOR URGENT RESPONSE**  
**Regarding Your Ballot for U.S. Representative for Congressional District 8**

Dear Voter,

On January 12, 2018, you were sent a ballot for the Special Election for U.S. Representative for Congress in Congressional District 8. While your ballot did not change due to any candidate challenge for legal sufficiency, the State of Arizona and the U.S. Department of Justice have entered into an agreement to provide additional time for receipt of your voted ballot in order to ensure that out-of-county military and overseas voters have sufficient time to vote.

**ACCORDINGLY, YOUR BALLOT WILL BE COUNTED:**

**IF EXECUTED AND MAILED ON OR BEFORE FEBRUARY 27, 2018 AND RECEIVED BY 12:00 PM (NOON)**  
**ARIZONA TIME ON MARCH 9, 2018.**

*Or*

**IF SENT BY FAX OR ELECTRONIC UPLOAD, YOUR BALLOT MUST THEN BE RECEIVED BY 7:00 PM ARIZONA**  
**TIME ON FEBRUARY 27, 2018.**

Please respond to this email as soon as possible by placing an "X" in one of the following response boxes and **provide your FULL NAME AND DATE OF BIRTH** so that we can locate your record and further assist you if need be:

<input checked="" type="checkbox"/>	<b>Please choose one response:</b>
<input type="checkbox"/>	Yes, I received my original ballot and the subsequent notice regarding its finality, and no impediments exist for a timely return of the ballot by Election Day, February 27, 2018.
<input type="checkbox"/>	Yes, I received my original ballot and the subsequent notice regarding its finality, but there may be impediments that prevent a timely return of the ballot by Election Day, February 27, 2018.
<input type="checkbox"/>	No, I did not receive my ballot, and I urgently request that a replacement ballot be sent.

**You may return your VOTED BALLOT and SIGNED AFFIDAVIT** by one of the following methods:

- Email to: [milos@risc.maricopa.gov](mailto:milos@risc.maricopa.gov)
- Fax to: 1 (602) 635-2248
- Postal Mail to: Attn: UOCAVA Early Voting, 510 South 3rd Avenue, Phoenix, Arizona 85003
- Electronic Upload: <https://apps.azsos.gov/apps/election/election/Military/VoterLogin.aspx>

For details on "electronic upload", please refer to the instructions previously sent with your original ballot. We recommend the "electronic upload," which is fast, simple, and the most expedited way to return your ballot. If you are not able or do not wish to return your ballot by electronic upload or by email or fax, and you believe your ballot might not arrive in time by postal mail, please contact us at 1 (602) 506-1981, or by email at [milos@risc.maricopa.gov](mailto:milos@risc.maricopa.gov) for assistance in arranging a cost-free expedited return option.

If you have any questions or concerns or need additional instructions regarding voting or returning your ballot, again please contact our office at 1 (602) 506-1981, or by email at [milos@risc.maricopa.gov](mailto:milos@risc.maricopa.gov), or by visiting our website at: [www.Maricopa.Vote](http://www.Maricopa.Vote). You may also find additional information regarding the agreement between the Arizona Secretary of State and the U.S. Department of Justice at: <https://recorder.maricopa.gov/site/informationconnections.aspx>.

**FOR: DEM**

**Subject line: URGENT RESPONSE REQUESTED**

**OFFICIAL ELECTION NOTICE**

**NOTICE FROM THE MARICOPA COUNTY RECORDER AND REQUEST FOR URGENT RESPONSE  
Regarding Your Ballot for U.S. Representative for Congressional District 8**

Dear Voter,

On January 12, 2018, you were sent a ballot for the Special Election for U.S. Representative for Congress in Congressional District 8. On January 23, 2018, candidate Gene Scharer was challenged and the **court removed candidate GENE SCHARER from the ballot due to insufficient petition signatures.** Accordingly, on January 23, 2018, we sent a corrected ballot removing candidate Scharer. The State of Arizona and the U.S. Department of Justice have entered into an agreement to provide additional time for receipt of your voted ballot in order to ensure that out-of-county military and overseas voters have sufficient time to vote.

**ACCORDINGLY, YOUR BALLOT WILL BE COUNTED:**

**IF EXECUTED AND MAILED ON OR BEFORE FEBRUARY 27, 2018 AND RECEIVED BY 12:00 PM (NOON) ARIZONA TIME ON MARCH 9, 2018.**

*Or*

**IF SENT BY FAX OR ELECTRONIC UPLOAD, YOUR BALLOT MUST THEN BE RECEIVED BY 7:00 PM ARIZONA TIME ON FEBRUARY 27, 2018.**

Please respond to this email as soon as possible by placing an "X" in one of the following response boxes and **provide your FULL NAME AND DATE OF BIRTH** so that we can locate your record and further assist you if need be:

<b>X</b>	<b>Please choose one response:</b>
	Yes, I received my <u>corrected</u> ballot and no impediments exist for a timely return of my <u>corrected</u> ballot by Election Day, February 27, 2018.
	Yes, I received my <u>corrected</u> ballot but there may be impediments that prevent a timely return of the <u>corrected</u> ballot by Election Day, February 27, 2018.
	No, I did not receive my <u>corrected</u> ballot, and I urgently request that a replacement ballot be sent.

**You may return your VOTED BALLOT and SIGNED AFFIDAVIT** by one of the following methods:

- Email to: [milos@risc.maricopa.gov](mailto:milos@risc.maricopa.gov)
- Fax to: **1 (602) 635-2248**
- Postal Mail to: **Attn: UOCAVA Early Voting, 510 South 3rd Avenue, Phoenix, Arizona 85003**
- Electronic Upload: <https://apps.azsos.gov/apps/election/election/Military/VoterLogin.aspx>

For details on "electronic upload", please refer to the instructions previously sent with your original ballot. We recommend the "electronic upload," which is fast, simple, and the most expedited way to return your ballot. If you are not able or do not wish to return your ballot by electronic upload or by email or fax, and you believe your ballot might not arrive in time by postal mail, please contact us at 1 (602) 506-1981, or by email at [milos@risc.maricopa.gov](mailto:milos@risc.maricopa.gov) for assistance in arranging a cost-free expedited return option.

If you have any questions or concerns or need additional instructions regarding voting or returning your ballot, please contact our office at 1 (602) 506-1981, or by email at [milos@risc.maricopa.gov](mailto:milos@risc.maricopa.gov), or by visiting our website at: [www.Maricopa.Vote](http://www.Maricopa.Vote). You may also find additional information regarding the agreement between the Arizona Secretary of State and the U.S. Department of Justice at: <https://recorder.maricopa.gov/site/informationconnections.aspx>.

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,  
Plaintiff,  
v.  
State of Arizona, et al.,  
Defendants.

No. CV-18-00505-PHX-DLR  
**CONSENT DECREE**

Before the Court is the parties' Joint Motion Requesting Expedited Entry of Consent Decree. (Doc. 2.)

Plaintiff United States of America initiated this action against the State of Arizona ("State"); and Michele Reagan, the Secretary of State of Arizona, in her official capacity (collectively "Defendants"), to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 52 U.S.C. § 20301 *et seq.* The United States' Complaint alleges a violation of UOCAVA arising from the Defendants' inability to transmit final or corrected absentee ballots to some of Arizona's absent uniformed services voters and overseas voters ("UOCAVA voters") by the 45th day before the February 27, 2018 special primary election for the United States House of Representatives, as required by Section 102(a)(8)(A) of UOCAVA, 52 U.S.C. § 20302(a)(8).

The United States and Defendants, through their respective counsel, have

1 conferred and agree that this action should be settled without the delay and expense of  
2 litigation. The parties share the goal of providing eligible UOCAVA voters with  
3 sufficient opportunity under Federal law to receive, cast and have their absentee ballots  
4 counted in the February 27, 2018 special primary election for Arizona's Eighth  
5 Congressional District. The parties recognize that the Defendants' inability to transmit  
6 final or corrected absentee ballots to the UOCAVA voters at least 45 days before the  
7 special primary election resulted from the truncated special election schedule established  
8 by state law, specifically the application of deadlines for challenges to candidates'  
9 nominating signature petitions, and did not result from willful or unintentional negligence  
10 by the state and local election officials responsible for implementing federal and state  
11 election laws. The parties have negotiated in good faith and agree to the entry of this  
12 Consent Decree as an appropriate resolution of the UOCAVA violation asserted by the  
13 United States. Accordingly, the United States and Defendants stipulate and agree that:

14 1. This action is brought by the Attorney General on behalf of the United States  
15 of America under UOCAVA. 52 U.S.C. § 20301 *et seq.* UOCAVA provides that  
16 UOCAVA voters shall be permitted "to use absentee registration procedures and to vote  
17 by absentee ballot in general, special, primary, and runoff elections for Federal office."  
18 52 U.S.C. § 20302.

19 2. The Attorney General is authorized to enforce the provisions of UOCAVA, 52  
20 U.S.C. § 20307, and this Court has jurisdiction of this action pursuant to 52 U.S.C.  
21 § 20307 and 28 U.S.C. §§ 1345 and 2201.

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

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

1           5. Section 102(a)(8)(A) of UOCAVA requires that states transmit validly  
2 requested ballots to UOCAVA voters not later than 45 days before an election for Federal  
3 office when the request is received at least 45 days before the election. 52 U.S.C.  
4 § 20302(a)(8)(A).

5           6. Pursuant to the Arizona election code, when a vacancy occurs in the office of a  
6 representative in Congress more than six months prior to the next general election, the  
7 governor shall call a special primary election and special general election for at least 80  
8 and no more than 90 days from the date of the occurrence of the vacancy. Ariz. Rev.  
9 Stat. § 16-222(B). On December 8, 2017, Representative Trent Franks resigned from  
10 Congress. Representative Franks represented the Eighth Congressional District, which is  
11 located entirely within Maricopa County. The governor set February 27, 2018 as the date  
12 for the special primary election and April 24, 2018 as the date for the special general  
13 election.

14           7. Under Arizona's election code, candidates were required to file nominating  
15 petitions for the special primary election by January 10, 2018, and the deadline to file  
16 challenges to such nominating petitions was January 18, 2018. Ariz. Rev. Stat. § 16-  
17 222(B).

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

22           9. On or about January 8, 2018, recognizing that petition challenges might occur  
23 after the deadline to transmit UOCAVA ballots, the Defendants contacted the Department  
24 of Defense and inquired about the possibility of obtaining a waiver of UOCAVA's 45-  
25 day transmission requirement under 52 U.S.C. § 20302(g). On or about January 10,  
26 2018, the Department of Defense contacted the Defendants and explained that the state  
27 was not eligible to seek a UOCAVA waiver under the circumstances presented.

28

1           10. On January 12, 2018, the day before the UOCAVA transmission deadline,  
2 Maricopa County election officials transmitted ballots (the “original ballots”) to all  
3 eligible UOCAVA voters who had requested them by that date.

4           11. Because of the possibility that changes to the ballot could result from  
5 challenges to a candidate’s nominating petition, Maricopa County election officials  
6 included a notice with the original ballots explaining that the list of candidates was not  
7 yet final due to potential candidate nomination petition challenges, and the final list of  
8 candidates would not be confirmed until January 25, 2018. The notice advised that an  
9 updated official ballot would be sent on that date. It further advised that voters could  
10 choose to vote the enclosed ballot, or wait for the updated ballot; but, if they voted the  
11 enclosed ballot and cast their vote for a candidate who was subsequently disqualified,  
12 they would not be able to vote a second ballot or change their vote. A copy of this notice  
13 is attached as Exhibit 1.

14           12. Some of the UOCAVA voters to whom original ballots were sent on January  
15 12, 2018 received Republican Party, Libertarian Party, or Green Party ballots. No  
16 challenges were ultimately filed by the January 18, 2018 deadline to the candidates on the  
17 Republican Party, Libertarian Party, or Green Party ballots. Accordingly, on January 19,  
18 2018, Maricopa County election officials sent a second notice to those voters explaining  
19 that no candidate petition challenge had been filed for the Republican, Libertarian or  
20 Green Party nomination. Therefore, eligible UOCAVA voters were notified that the  
21 ballot transmitted on January 12, 2018 had not changed and voters should cast that  
22 original ballot. The notice further advised that the UOCAVA voters should return their  
23 voted ballot so that it is received no later than 7:00 p.m. on election day, February 27,  
24 2018. A copy of this notice is attached as Exhibit 2.

25           13. Some of the UOCAVA voters to whom original ballots were sent on January  
26 12, 2018 received Democratic Party ballots. These ballots (the “original Democratic  
27 ballots”) included the names of three candidates who had filed timely nominating  
28 petitions. Challenges were ultimately filed by January 18, 2018 to two of these three

1 candidates. On January 23, 2018, a challenge to one of the Democratic Party candidates  
2 was sustained by a state court, and the candidate was ordered removed from the ballot.  
3 On January 23, 2018, Maricopa County election officials sent corrected ballots reflecting  
4 this change (the “corrected Democratic ballots”) to UOCAVA voters who had received  
5 original Democratic ballots. Along with the corrected Democratic ballots, election  
6 officials included a notice explaining that one of the candidates listed on the ballot mailed  
7 on January 12, 2018 had been removed pursuant to a court order. Therefore, the notice  
8 explained that the voter should cast a corrected ballot for the Democratic Party nominee,  
9 which was enclosed with the notice. The notice further advised the UOCAVA voters to  
10 vote the corrected ballot included with the notice and to return it so that it is received by  
11 7:00 p.m. on Election Day, February 27, 2018. A copy of this notice is attached as  
12 Exhibit 3.

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

17 15. Under Arizona law, ballots returned by UOCAVA voters must be received by  
18 7:00 p.m. on Election Day to be counted. *See* Ariz. Rev. Stat. §§ 16-547(C) and  
19 16-551(C). Accordingly, in order to be counted, the corrected Democratic ballots must  
20 be received by 7:00 p.m. on February 27, 2018, which is 35 days after the date of  
21 transmittal of the corrected ballots.

22 16. The truncated special election schedule established by Arizona law precluded  
23 the Defendants from transmitting final or corrected ballots to UOCAVA voters receiving  
24 a Democratic Party ballot by the 45th day before the February 27, 2018 special primary  
25 election for the House of Representatives, as required by Section 102(a)(8)(A) of  
26 UOCAVA, 52 U.S.C. § 20302(a)(8).

27 17. Furthermore, the notice sent to all UOCAVA voters for all parties on January  
28 12 along with the original ballots encouraged voters to await further notice to submit their

1 ballots, and to await receipt of an “updated official ballot.” However, UOCAVA voters  
2 who received Republican Party, Libertarian Party, or Green Party ballots were never sent  
3 an “updated official ballot,” and a second notice advising that there was no change to the  
4 ballot was not transmitted until January 19, 2018. To be counted, these original ballots  
5 must be received by February 27, 2018, which is 39 days after the date of transmittal of  
6 the second notice. As a result, the Defendants were unable to provide these UOCAVA  
7 voters the meaningful opportunity to cast a ballot that UOCAVA’s 45-day transmission  
8 deadline seeks to ensure. 52 U.S.C. § 20302(a)(8).

9 18. By agreeing to this consent decree, the Defendants seek to ensure that  
10 UOCAVA voters are not prejudiced because of the truncated special election schedule  
11 required by Arizona law.

12 19. To avoid the burdens, delays, and uncertainties of litigation and to efficiently  
13 and expeditiously promote the parties’ shared goal of ensuring that Arizona’s UOCAVA  
14 voters will have sufficient opportunity under Federal law to receive, mark and return their  
15 absentee ballots in time to be counted for the February 27, 2018 special primary election  
16 for the House of Representatives, the parties agree that this Court should enter an order as  
17 set forth below.

18 20. The parties reserve the right to modify this agreement as necessary, subject to  
19 approval from the Court. For example, Arizona law allows for the possibility of an  
20 automatic recount in a close election. Ariz. Rev. Stat. § 16-661. The parties will confer  
21 promptly after the special primary election is held and, if necessary, seek appropriate  
22 modification of this decree or other relief from the Court.

23 Accordingly, the parties having freely given their consent, and the terms of the  
24 Decree being fair, reasonable, and consistent with the requirements of UOCAVA,

25 **IT IS ORDERED** as follows:

- 26 (1) To ensure that all eligible UOCAVA voters will have sufficient  
27 opportunity to receive absentee ballots they have requested and  
28 to submit marked absentee ballots in time to be counted for the

1 February 27, 2018 special primary election for the House of  
2 Representatives, the Defendants shall ensure that Maricopa  
3 County election officials count: (a) all those original ballots  
4 transmitted to UOCAVA voters on January 12, 2018, but only if  
5 that ballot is the only ballot returned by the UOCAVA voter, (b)  
6 all those corrected ballots transmitted to UOCAVA voters on  
7 January 23, 2018, and (c) any Federal Write-In Absentee Ballots.  
8 In order for any ballot described in sections (a) – (c) above to be  
9 counted, the ballot must be otherwise valid under state law and  
10 meet the following transmittal criteria:

11 a. For ballots returned by postal or express mail: the ballot  
12 must be *executed and sent* by February 27, 2018 and be  
13 *received* by March 9, 2018 at 12:00 Noon Arizona time.

14 b. For ballots returned via any electronic submittal, including  
15 e-mail, facsimile, or electronic upload: the ballot must be  
16 received by February 27, 2018 at 7:00 p.m. Arizona time.

17 (2) Defendants shall take such steps as are necessary to afford those  
18 eligible UOCAVA voters who have not already returned a final  
19 ballot for this election (i.e., a Republican, Green, or Libertarian  
20 ballot, or a corrected Democratic ballot) an opportunity to learn  
21 of this Court's order and to ensure that all such voters receive  
22 appropriate instructions explaining ballot return deadlines and the  
23 options and procedures for returning a ballot. Maricopa County  
24 election officials have valid email addresses for all 375  
25 UOCAVA voters eligible to vote in this special primary election  
26 and will transmit such notice by email no later than the next  
27 business day following entry of this Order by the Court. If any  
28 such emailed notice to a voter is returned as undeliverable, the

1 notice shall be sent to the voter by United States Postal Service  
2 Express Overnight mail or other overnight delivery method if the  
3 voter is overseas, or by postal mail if the voter is not overseas.  
4 Such notice shall, at minimum: (a) ask UOCAVA voters who  
5 received Democratic Party ballots to confirm that they have  
6 received corrected Democratic ballots and no impediments exist  
7 for a timely return of the corrected ballot; (b) ask UOCAVA  
8 voters who received Republican Party, Libertarian Party, or  
9 Green Party ballots to confirm that they have received their  
10 original ballot and the additional notice regarding its finality and  
11 no impediments exist for a timely return of the original ballot; (c)  
12 explain the relevant deadlines for executing and returning all  
13 original and corrected ballots by electronic upload, facsimile, and  
14 postal mail; (d) explain to any voter who identifies impediments  
15 to a timely return of the ballot that it may be returned by the  
16 electronic upload and facsimile return options, or by United  
17 States Postal Service Express Overnight mail or other overnight  
18 delivery method with prepaid postage; and (e) provide  
19 appropriate contact information for additional assistance. A copy  
20 of Maricopa County election officials' planned notice is attached  
21 as Exhibit 4.

22 (3) The Defendants shall provide a report no later than two business  
23 days after entry of this Order by the Court in an agreed-upon  
24 format to the United States Department of Justice, confirming  
25 that each UOCAVA voter has been provided the individualized  
26 notice described in paragraph (2) above. If any UOCAVA voters  
27 have not been contacted by that date, Defendants shall continue  
28

1 to attempt to contact such voters and shall provide the United  
2 States updates on an agreed upon schedule.

3 (4) Defendants shall file a report with this Court no later than March  
4 31, 2018, in a format agreed upon by the parties, concerning the  
5 number of UOCAVA ballots received and counted for the  
6 February 27, 2018 special primary election.

7 (5) If necessary to ensure compliance with UOCAVA's 45-day  
8 transmission deadline of March 10 for the April 24, 2018 special  
9 general election, election results for the February 27, 2018  
10 special primary election may be formally canvassed and certified  
11 in accordance with state law at any time prior to March 9, 2018 if  
12 the number of outstanding absentee ballots from UOCAVA  
13 voters that have not been returned could not mathematically alter  
14 the outcome of the election, subject to amendment, re-canvass, or  
15 re-certification to later add any votes from UOCAVA ballots  
16 accepted in accordance with this Court's Order. Thus, under the  
17 circumstances described in this paragraph, Maricopa County  
18 election officials may transmit UOCAVA ballots for the April  
19 24, 2018 special general election notwithstanding the possibility  
20 that the results of the special primary election may be  
21 subsequently re-canvassed and re-certified. These procedures are  
22 designed to ensure that state and county election officials can  
23 maintain existing canvassing and certification deadlines for the  
24 special primary election and can timely transmit UOCAVA  
25 ballots to voters by the March 10, 2018 45-day deadline before  
26 the April 24, 2018 special general election.

27 (6) If, under the terms of paragraph (5), the results of the primary  
28 election are canvassed and certified before March 9, 2018 and

1 there are outstanding UOCAVA ballots that have not been  
2 received for a particular party's primary, and the canvassed and  
3 certified results for that party's primary show a margin  
4 sufficiently small so as to require an automatic recount under  
5 Ariz. Rev. Stat. § 16-661, the recount may proceed immediately  
6 under the procedures required by state law, and the results of the  
7 recount shall include all UOCAVA ballots required to be counted  
8 by this Order.

9 (7) If the transmission of UOCAVA ballots for the special general  
10 election is delayed up to five days beyond the March 10, 2018  
11 deadline due to a delay in canvassing and certifying, or  
12 completing an automatic recount of, the results of the special  
13 primary election due to the extension of the ballot receipt  
14 deadline effected by this Order, the deadline for receipt of special  
15 general election ballots returned by UOCAVA voters by postal or  
16 express mail, and executed and sent by April 24, 2018, shall be  
17 extended beyond April 24, 2018 by the number of days past  
18 March 10, 2018 that the ballots were transmitted. No later than  
19 two business days following the transmission of UOCAVA  
20 ballots for the special general election, the Defendants shall  
21 provide a report to the United States Department of Justice  
22 specifying the date of transmission of UOCAVA ballots for the  
23 special general election, the number of UOCAVA ballots  
24 transmitted by method of transmission, and a copy of any notice  
25 of receipt deadline extension provided to UOCAVA voters.

26 (8) In the event the ballot receipt deadline for the special general  
27 election is extended beyond April 24, 2018 under the terms of the  
28 preceding paragraph, election results for the special general

1 election may be formally canvassed and certified in accordance  
2 with state law at any time prior to the ballot receipt deadline if  
3 the number of outstanding absentee ballots from UOCAVA  
4 voters could not mathematically alter the outcome of the election,  
5 subject to amendment or re-certification to later add any votes  
6 from UOCAVA ballots accepted in accordance with this Court's  
7 Order.

8 (9) Should it at any time appear that, due to a delay in canvassing  
9 and certifying, or completing an automatic recount of, the results  
10 of the special primary election due to the extension of the ballot  
11 receipt deadline effected by this Order, Maricopa County election  
12 officials will be unable to transmit UOCAVA ballots for the  
13 special general election by March 15, 2018, the Defendants shall  
14 promptly notify the United States of the circumstances causing  
15 the expected delay, and the parties shall meet and confer to  
16 discuss appropriate modification of this Order and other  
17 necessary relief from this Court, such as express delivery and  
18 return of UOCAVA ballots, alternative transmission methods for  
19 UOCAVA ballots, additional notice to UOCAVA voters, and/or  
20 other appropriate remedial measures.

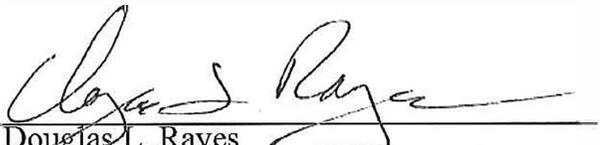
21 (10) Defendants shall take such actions as are necessary to assure that  
22 UOCAVA voters shall have a fair and reasonable opportunity to  
23 participate in future Federal elections, including proposing  
24 legislation and taking any administrative actions needed to fully  
25 remedy potential UOCAVA violations arising from Arizona law  
26 governing the State's special election calendar. The parties agree  
27 to confer on the progress of these efforts, and Defendants shall  
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provide a status report to the United States Department of Justice  
by June 30, 2018.

The Court shall retain jurisdiction over this action through September 30, 2018, to  
enter such further relief as may be necessary for the effectuation of the terms of this  
Consent Decree, including entry of such other relief as may be necessary to abate any  
violation of UOCAVA.

Dated this 15th day of February, 2018.

  
Douglas L. Rayes  
United States District Judge

State of Arizona  
House of Representatives  
Fifty-third Legislature  
Second Regular Session  
2018

**CHAPTER 316**  
**HOUSE BILL 2538**

AN ACT

AMENDING SECTIONS 16-222 AND 16-223, ARIZONA REVISED STATUTES; RELATING TO  
ELECTION DATES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 16-222, Arizona Revised Statutes, is amended to  
3 read:

4 16-222. Vacancy in the office of United States senator or  
5 representative

6 A. When a vacancy occurs in the office of United States senator or  
7 representative in Congress by reason of death or resignation, or from any  
8 other cause AND EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, the  
9 vacancy shall be filled at the next general election. At such AN election  
10 the person elected shall fill the unexpired term of the vacated office.

11 B. For a vacancy in the office of representative in Congress, if  
12 the next general election is not to be held within six months ~~from~~ AFTER  
13 the date of the occurrence of the vacancy, the governor shall call a  
14 special primary election and a special general election to fill the  
15 vacancy. The governor shall call the special primary election and  
16 establish its date within seventy-two hours after the office is officially  
17 declared vacant. Notwithstanding sections 16-313, 16-351 and 16-542, for  
18 a candidate for office at an election held pursuant to this subsection,  
19 the following apply:

20 1. The special primary election shall be held ~~no~~ NOT less than  
21 ~~eighty~~ ONE HUNDRED TWENTY nor more than ~~ninety~~ ONE HUNDRED THIRTY-THREE  
22 days after the occurrence of the vacancy, and the special general election  
23 shall be held not less than ~~fifty~~ SEVENTY nor more than ~~sixty~~ EIGHTY days  
24 after the special primary election.

25 2. Nomination papers and nomination petitions shall be filed ~~no~~ NOT  
26 later than thirty days after the date of the proclamation calling the  
27 election.

28 3. Any court action challenging the nomination of a candidate shall  
29 be filed ~~no~~ NOT later than 5:00 p.m. on the fifth business day after the  
30 last day for filing nomination papers and petitions.

31 4. The superior court shall hear and render a decision within five  
32 days after the filing of the action.

33 5. Beginning fifteen days before the date of the election, the  
34 county recorder or other officer in charge of elections shall mail early  
35 ballots within forty-eight hours after receipt of a complete and correct  
36 early ballot request from persons qualified to vote.

37 C. For a vacancy in the office of United States senator, the  
38 governor shall appoint a person to fill the vacancy. That appointee shall  
39 be of the same political party as the person vacating the office and,  
40 EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, shall serve until the  
41 person elected at the next general election is qualified and assumes  
42 office. If the person vacating the office changed political party  
43 ~~affiliations~~ AFFILIATION after taking office, the person who is appointed  
44 to fill the vacancy shall be of the same political party that the vacating  
45 officeholder was when the vacating officeholder was elected or appointed  
46 to that office.

1 D. IF A VACANCY IN THE OFFICE OF UNITED STATES SENATOR OCCURS MORE  
2 THAN ONE HUNDRED FIFTY DAYS BEFORE THE NEXT REGULAR PRIMARY ELECTION DATE,  
3 THE PERSON WHO IS APPOINTED PURSUANT TO SUBSECTION C OF THIS SECTION SHALL  
4 CONTINUE TO SERVE UNTIL THE VACANCY IS FILLED AT THE NEXT GENERAL  
5 ELECTION. IF A VACANCY IN THE OFFICE OF UNITED STATES SENATOR OCCURS ONE  
6 HUNDRED FIFTY DAYS OR LESS BEFORE THE NEXT REGULAR PRIMARY ELECTION DATE,  
7 THE PERSON WHO IS APPOINTED SHALL SERVE UNTIL THE VACANCY IS FILLED AT THE  
8 SECOND REGULAR GENERAL ELECTION HELD AFTER THE VACANCY OCCURS, AND THE  
9 PERSON ELECTED SHALL FILL THE REMAINING UNEXPIRED TERM OF THE VACATED  
10 OFFICE.

11 ~~D.~~ E. For a vacancy in the office of representative in Congress  
12 that occurs simultaneously with at least one hundred additional vacancies  
13 in the office of representative in Congress as prescribed by 2 United  
14 States Code section 8, a special general election to fill the vacancy in  
15 this state shall be held ~~no~~ NOT more than forty-nine days after the  
16 declaration of the vacancy unless a regularly scheduled general election  
17 or previously scheduled special general election is held within seventy-  
18 five days after the declaration of the vacancy.

19 Sec. 2. Section 16-223, Arizona Revised Statutes, is amended to  
20 read:

21 16-223. Issuance of proclamation for special election by  
22 governor; publication by clerks of boards of  
23 supervisors

24 A. Within ten days after a vacancy occurs in the office of  
25 representative in Congress, if a special primary and special general  
26 election are required by section 16-222, the governor shall issue a  
27 proclamation containing a statement of the time of the special primary  
28 election and the special general election and the offices to be filled.

29 B. The governor shall transmit a copy of the election proclamation  
30 to the officer in charge of elections and the clerk of each board of  
31 supervisors of ~~the several counties~~ EACH COUNTY THAT IS REQUIRED TO  
32 PARTICIPATE IN THE SPECIAL ELECTION.

33 C. The clerk of the board of supervisors OF EACH COUNTY THAT IS  
34 REQUIRED TO PARTICIPATE IN THE SPECIAL ELECTION, WITHIN FIVE DAYS AFTER  
35 RECEIVING THE PROCLAMATION PRESCRIBED IN SUBSECTION B OF THIS SECTION,  
36 shall publish a copy of the election proclamation in an official newspaper  
37 of the county at least five days before the special primary election and  
38 at least five days before THE SPECIAL GENERAL ELECTION AND SHALL POST ON A  
39 COUNTY-OPERATED WEBSITE A NOTICE STATING THE DATES OF THE SPECIAL PRIMARY  
40 ELECTION AND the special general election.

41 (EMERGENCY NOT ENACTED)

42 Sec. 3. Emergency

43 This act is an emergency measure that is necessary to preserve the  
44 public peace, health or safety and is operative immediately as provided by  
45 law.

H.B. 2538

APPROVED BY THE GOVERNOR MAY 16, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 16, 2018.

**United States v. Wisconsin**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF WISCONSIN; WISCONSIN ELECTIONS  
COMMISSION; and MEAGAN WOLFE, in her  
official capacity as the Interim Administrator of the  
Wisconsin Elections Commission,

Defendants.

Civil Action No.: 18-cv-471

**COMPLAINT**

Plaintiff 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”), 52 U.S.C. §§ 20301 *et seq.* UOCAVA provides that absent uniformed services voters and overseas U.S. citizen voters (“UOCAVA 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.” 52 U.S.C. § 20302(a)(1). UOCAVA does not distinguish between overseas voters who reside overseas temporarily and overseas voters who reside overseas indefinitely. *See* 52 U.S.C. § 20310(5). The State of Wisconsin, through its laws and election administration procedures,

does not provide overseas voters who reside overseas temporarily all of the protections they are entitled to under UOCAVA.

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 52 U.S.C. § 20307, and brings this action for declaratory and injunctive relief to ensure that overseas voters who reside overseas temporarily (“temporary overseas voters”), including overseas voters who reside overseas and intend to return to Wisconsin at some point in the future, will have the opportunity to vote guaranteed by UOCAVA in Wisconsin’s 2018 elections for Federal office and in future elections for Federal office.

3. This Court has jurisdiction pursuant to 52 U.S.C. § 20307 and 28 U.S.C. §§ 1345 and 2201.

4. Defendant State of Wisconsin (the “State”) is responsible for complying with UOCAVA, and ensuring that temporary overseas voters, including overseas voters who reside overseas and intend to return to Wisconsin at some point in the future, receive the protections they are entitled to under UOCAVA. 52 U.S.C. § 20302.

5. Defendant Wisconsin Elections Commission (“Elections Commission”) is responsible for administering laws in the State regarding elections. Wis. Stat. § 5.05(1).

6. Defendant Meagan Wolfe is the Elections Commission’s Interim Administrator and is sued in her official capacity. The Administrator also serves as the State’s Chief Election Officer. Wis. Stat. § 5.05(3g).

7. Among other requirements, UOCAVA requires states to provide UOCAVA voters the option to receive their blank absentee ballots by mail or electronically, and to permit UOCAVA voters to use Federal write-in absentee ballots. 52 U.S.C. § 20302(a)(7), (a)(3).

8. UOCAVA requires states to establish procedures to transmit blank absentee

ballots to UOCAVA voters by mail or electronically in accordance with the transmission method the voters designate. 52 U.S.C. § 20302(a)(7).

9. UOCAVA requires states to permit UOCAVA voters to use the Federal write-in absentee ballot as a back-up measure to vote in elections for Federal office if the voters have made timely application for, and have not received, the absentee ballots from their states. 52 U.S.C. §§ 20302(a)(3).

10. UOCAVA defines an “overseas voter” as (1) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved; (2) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (3) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States. 52 U.S.C. § 20310(5). The federal law does not distinguish between those overseas voters who stay overseas indefinitely and those who reside overseas temporarily and intend to return to the United States.

11. Wisconsin’s statute governing federal overseas voting defines an “overseas elector” as “a U.S. citizen . . . who does not qualify as a resident of this state . . . .” Wis. Stat. § 6.24(1). However, Wisconsin’s definition of a resident of its state includes people who, when absent, intend to return to the state. Wis. Stat. § 6.10(1). Thus, Wisconsin’s definition of an “overseas elector” excludes temporary overseas voters.

12. Wisconsin law does not allow temporary overseas voters to receive absentee ballots electronically. Wisconsin Act 75, passed in 2011, prevents municipal clerks from faxing or emailing absentee ballots, except to military electors or those classified as permanent overseas

electors. Although a 2016 federal court order enjoined the State from prohibiting municipal clerks from sending absentee ballots by fax or email on grounds that the provision is unconstitutional, *see One Wisconsin Inst. v. Thomsen*, 198 F. Supp. 3d 896, 948 (W.D. Wis. 2016), Wisconsin has appealed that order. While the appeal has been pending, the Elections Commission issued guidance indicating that providing absentee ballots electronically to regular absentee voters—which includes temporary overseas voters—is optional. *See Frequently-Asked Questions – Implementation of Decision in One Wisconsin Institute Case*, August 26, 2016, available at <http://elections.wi.gov/node/4078>.

13. Wisconsin’s exclusion of temporary overseas voters from its statutory definition of “overseas elector,” deprives temporary overseas voters of two of the protections they are entitled to under UOCAVA.

(a) Wisconsin fails to ensure that all overseas voters are afforded the option to receive their blank ballots electronically, in violation of UOCAVA’s mandate that states guarantee that option to all UOCAVA voters. 52 U.S.C. § 20302(a)(7); and

(b) Wisconsin fails to permit temporary overseas voters to utilize Federal write-in absentee ballots, in violation of UOCAVA. 52 U.S.C. §§ 20302(a)(3).

14. The next Federal election scheduled in Wisconsin is the August 14, 2018 Federal primary election. Under UOCAVA, the 45-day deadline for transmitting ballots to all eligible UOCAVA voters is June 30, 2018. *See* 52 U.S.C. § 20302(a)(8).

15. An order of this Court requiring Defendants to take corrective action is necessary to ensure that the State’s temporary overseas voters receive all the protections to which they are entitled under UOCAVA for the upcoming 2018 Federal primary and general elections, and in all future Federal elections.

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

(1) Issue a declaratory judgment under 28 U.S.C. § 2201 that Wisconsin's failure to ensure that local clerks provide temporary overseas voters the option to receive their absentee ballots electronically, and to permit temporary overseas voters to use Federal write-in absentee ballots, violates UOCAVA, 52 U.S.C. §§ 20302(a)(7) and (a)(3).

(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 temporary overseas voters covered under UOCAVA are guaranteed the option to receive blank absentee ballots by mail or electronically and are permitted to utilize Federal write-in absentee ballots for the Federal elections to be held on August 14, 2018 and November 6, 2018;

(b) To take such steps as are necessary to afford temporary overseas voters who qualify for protection under UOCAVA a reasonable opportunity to learn of this Court's order;

(c) To report to the United States and the Court concerning the Defendants' actions taken to comply with the Court's order; and

(d) To take such other steps as are necessary to ensure that the State conducts all future Federal elections in compliance with UOCAVA requirements, including proposing legislation and taking any administrative actions needed to ensure that temporary overseas voters who intend to return to the United States are afforded all of the protections of UOCAVA.

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.

Dated: June 19, 2018

SCOTT C. BLADER  
United States Attorney  
Western District of Wisconsin

JOHN M. GORE  
Acting Assistant Attorney General  
Civil Rights Division

s/ Antonio M. Trillo  
ANTONIO M. TRILLO  
Assistant United States Attorney  
United States Attorney's Office  
Western District of Wisconsin  
222 West Washington Avenue, Suite 700  
Madison, WI 53703  
Phone: (608) 264-5158

s/ Kaycee M. Sullivan  
T. CHRISTIAN HERREN, JR.  
JOHN A. RUSS IV  
KAYCEE M. SULLIVAN  
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Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530  
Phone: (202) 305-6828  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF WISCONSIN; WISCONSIN ELECTIONS  
COMMISSION; and MEAGAN WOLFE, in her  
official capacity as the Interim Administrator of the  
Wisconsin Elections Commission,

Defendants.

Civil Action No.: 18-cv-471

CONSENT JUDGMENT AND DECREE

Plaintiff, United States of America, initiated this action against the State of Wisconsin; the Wisconsin Elections Commission; and Meagan Wolfe, in her official capacity as the Interim Administrator of the Elections Commission (collectively, "Defendants"), to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 52 U.S.C. §§ 20301 *et seq.*

The United States alleges that Defendants, through Wisconsin laws and election administration procedures, do not provide Wisconsin voters who temporarily reside overseas the protections to which they are entitled under UOCAVA. 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 ensuring that all of

Wisconsin's eligible U.S. citizens are afforded the voting guarantees of UOCAVA. The parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the UOCAVA claim alleged by the United States. Accordingly, the United States and Defendants stipulate and agree that:

1.s For purposes of this agreement, the phrase "temporary overseas voters" is defined to mean Wisconsin voters who "reside[ ] outside the United States," within the meaning of 52 U.S.C. § 20310(5)(B) and (C), and who intend to return at some point in the future to Wisconsin.

2.s The Attorney General is authorized to enforce the provisions of UOCAVA, 52 U.S.C. § 20307, and brings this action for declaratory and injunctive relief to ensure that Wisconsin's temporary overseas voters will have the protections guaranteed by UOCAVA in Wisconsin's 2018 elections for Federal office and in future elections for Federal office.

3.s This Court has jurisdiction pursuant to 52 U.S.C. § 20307 and 28 U.S.C. §§ 1345s and 2201.

4.s Defendant State of Wisconsin (the "State" or "Wisconsin") is covered by UOCAVA and has the responsibility of complying with its requirements. 52 U.S.C. § 20302.

5.s Defendant Wisconsin Elections Commission ("Elections Commission") is responsible for administering laws in the State regarding elections. Wis. Stat. § 5.05(1).

6.s Defendant Megan Wolfe is the Elections Commission's Interim Administrator and is sued in her official capacity. The Administrator also serves as the State's Chief Election Officer. Wis. Stat. § 5.05(3g).

7.s UOCAVA guarantees absent uniformed services voters and overseas voters (collectively, "UOCAVA voters") the right to "use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 52

U.S.C. § 20302(a)(1). The statute requires that states afford a number of specific protections for all UOCAVA voters, including the option to receive their blank absentee ballots by mail or electronically, and the ability to use Federal write-in absentee ballots to vote in Federal elections. 52 U.S.C. § 20302(a).

8.s UOCAVA requires states to establish procedures to transmit blank absentee ballots to UOCAVA voters by mail or electronically in accordance with the transmission method the voters designate. 52 U.S.C. § 20302(a)(7), (f)(1).

9.s UOCAVA requires states to permit UOCAVA voters to use the Federal write-ins absentee ballot as a back-up measure to vote in elections for Federal office if the voters have made timely application for, and have not received, the absentee ballots from their states. 52 U.S.C. §§ 20302(a)(3), 20303(a).

10.s UOCAVA defines an “overseas voter” as (1) an absent uniformed services voters who, by reason of active duty or service is absent from the United States on the date of the election involved; (2) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or (3) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States. 52 U.S.C. § 20310(5). The federal law does not distinguish between those overseas voters who resides overseas indefinitely and those who reside overseas temporarily and intend to return to the United States. *See id.*

11.s Wisconsin’s statute governing federal overseas voting defines an “overseas elector” as “a U.S. citizen who is not disqualified from voting under [Wis. Stat. §] 6.03, who has attained or will attain the age of 18 by the date of an election at which the citizen proposes to

vote and who does not qualify as a resident of [Wisconsin] under [Wis. Stat. §] 6.10, but who was last domiciled in [Wisconsin] or whose parent was last domiciled in [Wisconsin] immediately prior to the parent's departure from the United States, and who is not registered to vote or voting in any other state, territory or possession." Wis. Stat. § 6.24(1). Under that definition, a person who qualifies as a resident of Wisconsin under Wis. Stat. § 6.10 is not an overseas elector.

12.s Wisconsin Stat. § 6.10 provides the standards governing residence as a qualification for voting in Wisconsin. Under Wis. Stat. § 6.10(1), "[t]he residence of a person is the place where the person's habitation is fixed, without any present intent to move, and to which, when absent, the person intends to return." According to that residency standard, a person who has a fixed habitation in Wisconsin to which, when absent, the person intends to return qualifies as a Wisconsin resident for voting purposes.

13.s It follows from Wis. Stat. §§ 6.10(1) and 6.24(1) that a temporary overseas voters as defined in this agreement is not an overseas elector as defined in Wis. Stat. § 6.24(1). As a result, the protections that Wisconsin affords to overseas electors under Wis. Stat. § 6.24, are not afforded to temporary overseas voters. For the same reason, Wisconsin does not afford temporary overseas voters the protections guaranteed to them under UOCAVA. Instead, the Wisconsin statutes treat temporary overseas voters the same as other Wisconsin absentee voters who are unable or unwilling to cast an in-person ballot on Election Day, but are not located outside the United States.

14.s Wisconsin's exclusion of temporary overseas voters from its statutory definition of "overseas elector," deprives temporary overseas voters of two of the protections they are entitled to under UOCAVA, specifically:

(a)e Wisconsin fails to ensure that temporary overseas voters are afforded the option to receive their blank ballots electronically, in violation of UOCAVA's mandate that states guarantee that option to all UOCAVA voters. 52 U.S.C. § 20302(a)(7); and

(b)e Wisconsin fails to permit temporary overseas voters to utilize Federal write-in absentee ballots to cast votes, in violation of UOCAVA. 52 U.S.C. §§ 20302(a)(3), 20303(a)(1).e

15.e In addition, 2011 Wisconsin Act 75 prevents municipal clerks from faxing or emailing absentee ballots, except to military electors or those classified as permanent overseas electors. Although a 2016 federal court order enjoined the State from prohibiting municipal clerks from sending absentee ballots by fax or email on grounds that the provision is unconstitutional, see *One Wisconsin Inst. v. Thomsen*, 198 F. Supp. 3d 896, 948 (W.D. Wis. 2016), Wisconsin has appealed that order. While the appeal has been pending, the Elections Commission issued guidance indicating that providing absentee ballots electronically to regular absentee voters—which includes temporary overseas voters—is optional. See *Frequently-Asked Questions – Implementation of Decision in One Wisconsin Institute Case*, August 26, 2016, available at <http://elections.wi.gov/node/4078>.

16.e The next Federal election scheduled in Wisconsin is the August 14, 2018 Federal primary election. Under UOCAVA, the 45-day deadline for transmitting ballots to all eligible UOCAVA voters is June 30, 2018. See 52 U.S.C. § 20302(a)(8).

17.e In order to avoid the burdens, delays, and uncertainties of litigation and to efficiently and expeditiously promote the parties' shared goal of ensuring that all Wisconsin's UOCAVA voters will receive the protections to which they are entitled under federal law, the parties agree that the Court should enter an order requiring Wisconsin to allow its temporary

overseas voters to vote in accordance with UOCAVA's requirements in all future Federal elections, including the Federal elections on August 14 and November 6, 2018.

18.e In entering this agreement, Defendants are not committing themselves to any position regarding the meaning of the word "resides" as used in 52 U.S.C. § 20310(5)(B) and (C).

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

(1)e Defendants shall ensure that, in all future Federal elections, including the Federal elections on August 14 and November 6, 2018, all Wisconsin's UOCAVA voters, including those who are temporary overseas voters, (1) shall be afforded the option to receive their blank absentee ballots by mail or electronically, in accordance with 52 U.S.C. § 20302(a)(7); and (2) shall be permitted to use Federal write-in absentee ballots to cast votes, in accordance with 52 U.S.C. § 20302(a)(3).

(2)e Defendants shall take such steps as are necessary to provide notice of this Court's order to all Wisconsin election officials with responsibilities for complying with UOCAVA. Upon entry of this decree, the Defendants shall promptly update the Wisconsin Elections Commission's website to reflect these changes and shall promptly issue guidance to local election officials. The guidance to local officials shall summarize their duties under this order, shall make it clear that this order supersedes any inconsistent previous agency guidance related to temporary overseas voters, and shall provide information for officials to contact the Elections Commission.

(3)e Defendants shall take such steps as are necessary to afford temporary

overseas voters who qualify for protection under UOCAVA a reasonable opportunity to learn of this Court's order. Upon entry of this consent decree, the Defendants shall issue a press statement for immediate release, posted immediately on the Wisconsin Elections Commission's website and distributed to the Federal Voting Assistance Program (FVAP); USA Today International (<http://www.usatoday.com>); Overseas Vote Foundation (<http://overseasvotefoundation.org>); and any other newspaper or news media within Wisconsin that Defendants determine appropriate to reach UOCAVA voters from Wisconsin. The news release shall, at a minimum: (a) summarize this order and the protections to which UOCAVA voters, including temporary overseas voters who intend to return to the United States, are entitled; (b) identify the deadlines relevant to UOCAVA voters; and (c) provide appropriate contact information for the Wisconsin Elections Commission;

(4)s The Defendants shall revise any forms, instructions, and materials used by the Elections Commission or provided by the Elections Commission to Wisconsin local election officials to reflect the ability of temporary overseas voters to receive their blank absentee ballots by mail or electronically and to use Federal write-in absentee ballots to cast their votes. The Defendants shall make their best effort to complete those revisions by September 20, 2018, and shall confer with the United States on the progress of the revisions.

(5)s The Defendants shall take such actions as are necessary to assure that temporary overseas voters will receive all of the protections of UOCAVA in all future elections for Federal office, including proposing state legislation that complies with the requirements of UOCAVA as to temporary overseas voters and taking any administrative actions needed to achieve such compliance. The parties agree to confer periodically on the

implementation of this court order, and Defendants shall file with the Court a status report no later than May 1, 2019.

This 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, 2020. The parties may move to terminate the order earlier, if the State has adopted legislation that complies fully with the requirements of UOCAVA as to temporary overseas voters. For good cause shown, any party may move to extend the consent decree or to reopen the case.

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The undersigned agree to entry of this Consent Decree on June 19, 2018:

For the Plaintiff:

SCOTT C. BLADER  
United States Attorney  
Western District of Wisconsin

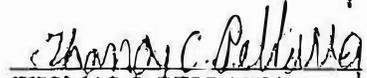
JOHN M. GORE  
Acting Assistant Attorney General  
Civil Rights Division

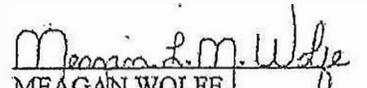
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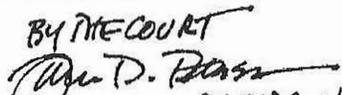
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BY THE COURT  
  
JAMES D. PEPPERSON  
CHIEF JUDGE

Entered this 20th day of June, 2018.

  
Peter Oppeneer  
Clerk of Court

**III. UOCAVA Enforcement Activity by the  
Attorney General in 2018**

**B. Litigation to Defend the Constitutionality  
of UOCAVA**

**Segovia v. United States**

In the  
United States Court of Appeals  
For the Seventh Circuit

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No. 16-4240

LUIS SEGOVIA, et al.,

*Plaintiffs-Appellants,*

*v.*

UNITED STATES OF AMERICA, et al.,

*Defendants-Appellees.*

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Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division.  
No. 15-cv-10196 — Joan B. Gottschall, *Judge.*

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ARGUED SEPTEMBER 15, 2017 — DECIDED JANUARY 18, 2018

Before MANION, ROVNER, and HAMILTON, *Circuit Judges.*

MANION, *Circuit Judge.* In this appeal, former residents of Illinois now residing in the United States territories of Puerto Rico, Guam, and the Virgin Islands challenge federal and state statutes that do not allow them to obtain absentee ballots for federal elections in Illinois. Generally, federal and state law require that former residents living outside of the United States who retain their U.S. citizenship receive such ballots. But the territories where the plaintiffs now reside are considered part of the United States under the relevant statutes,

while other territories are not. The anomalous result is that former Illinois residents who move to some territories can still vote in federal elections in Illinois, but the plaintiffs cannot. The plaintiffs challenge that result as violative of their equal protection rights and their right to travel protected by the Due Process Clause.

The district court rejected their claims, holding that there was a rational basis for the inclusion of some territories but not others in the definition of the United States. With respect to the challenge to the Illinois statute, we agree with the district court. However, we conclude that plaintiffs lack standing to challenge the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in this context. The UOCAVA does not prevent Illinois from providing the plaintiffs absentee ballots, and so it does not cause their injury. To the extent the plaintiffs are injured, it is because they are not entitled to ballots under state law. Therefore, we affirm the portion of the judgment in favor of the state defendants, but vacate the portion of the judgment in favor of the federal defendants and remand the case with instructions to dismiss that portion for want of jurisdiction.

### **I. Background**

Congress enacted the UOCAVA to protect the voting rights of United States citizens who move overseas but retain their American citizenship. To do that, the law requires the States to permit “overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 52 U.S.C. § 20302(a)(1). An “overseas voter” for these purposes is “a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in

which the person was domiciled before leaving the United States.” *Id.* § 20310(5)(c). In short, federal law requires each State to provide absentee ballots to its former otherwise qualified residents who now reside outside of the United States.

Illinois complies with this requirement. Its law provides that “[a]ny non-resident civilian citizen, otherwise qualified to vote, may make application to the election authority having jurisdiction over his precinct of former residence for a vote by mail ballot containing the Federal offices only not less than 10 days before a Federal election.” 10 ILCS 5/20-2.2. Non-resident civilian citizens are United States citizens who reside “outside the territorial limits of the United States,” but previously maintained a residence in Illinois and are not registered to vote in any other State. *Id.* 5/20-1(4). As required under the UOCAVA, these voters need not declare any intent to return to Illinois in order to be eligible to vote. *Id.*

So what’s the catch? Our plaintiffs are residents of Guam, Puerto Rico, and the Virgin Islands. All three territories are considered part of the United States under both the UOCAVA and Illinois law. Federal law says the United States “means the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa[,]” 52 U.S.C. § 20310(8), while Illinois law says that it includes “the District of Columbia, the Commonwealth of Puerto Rico, Guam and the Virgin Islands; but does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.” 10 ILCS 5/20-1(1). The upshot is that the plaintiffs are not entitled to vote in federal elections in Illinois because they still reside within the United States. Had they moved instead to American Samoa or the Northern Mariana

Islands, Illinois law would consider them to be overseas residents entitled to ballots. This distinction between the various U.S. territories gave rise to this litigation.

The plaintiffs sued federal and Illinois officials in the Northern District of Illinois seeking declaratory and injunctive relief. They argued that the UOCAVA and Illinois law violate the Due Process and Equal Protection Clauses by permitting residents of some territories to vote in federal elections but not others. The plaintiffs also contended that the statutes infringe upon their right to travel guaranteed by the Due Process Clause. The parties filed cross-motions for summary judgment, and the district court granted the defendants' motions in two separate opinions. *Segovia v. Bd. of Election Commrs.*, 201 F. Supp. 3d 924 (N.D. Ill. 2016) (*Segovia I*); *Segovia v. Bd. of Election Commrs.*, 218 F. Supp. 3d 643 (N.D. Ill. 2016) (*Segovia II*). The plaintiffs timely appealed.

## II. Analysis

### A. Standing to Challenge the UOCAVA

Nobody doubts that the plaintiffs, who are unable to apply for absentee ballots, have suffered an injury-in-fact sufficient to confer Article III standing in this case. But, in order for us to properly exercise jurisdiction, their injury must be "fairly traceable to the challenged conduct." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013). The federal defendants say that the plaintiffs' injury is not traceable to the government's enforcement of the UOCAVA, but rather to the plaintiffs' ineligibility for ballots under Illinois law. As they explain, federal law sets the floor, but Illinois is permitted to offer ballots to residents of the territories even if not required to do so by the

UOCAVA. The district court rejected this argument, concluding that “Illinois is bound by the floor that the federal defendants stress that the UOCAVA provides.” *Segovia I*, 201 F. Supp. 3d at 937. Thus, it concluded that the plaintiffs’ injury is in part traceable to the UOCAVA.

We disagree. Federal law *requires* Illinois to provide absentee ballots for its former residents living in the Northern Mariana Islands, but it does not *prohibit* Illinois from providing such ballots to former residents in Guam, Puerto Rico, and the Virgin Islands. State law could provide the plaintiffs the ballots they seek; it simply doesn’t. Instead, it adds (by way of subtraction from the definition of the United States) only American Samoa to the roster of territories that may take advantage of the overseas voting procedures. In short, the reason the plaintiffs cannot vote in federal elections in Illinois is not the UOCAVA, but Illinois’ own election law.

To be sure, federal law *could have* required Illinois to provide the plaintiffs absentee ballots. But that does not render federal law the cause of the plaintiffs’ injuries. Consider *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26 (1976). In that case, the Supreme Court held that indigent patients lacked standing to challenge an IRS rule that gave favorable tax treatment to hospitals which declined to provide non-emergency services to such patients. The Court explained that Article III “requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.” *Id.* at 41–42. So while the IRS rule may have incentivized hospitals to deny the plaintiffs care, it was the hospitals—not the IRS—that made the decision not to treat the patients.

Our decision in *DH2, Inc. v. S.E.C.*, 422 F.3d 591 (7th Cir. 2005), is similar. DH2 was an arbitrageur that made money buying undervalued mutual funds whose prices had yet to be adjusted from the effects of overseas trading. It challenged SEC statements that it said required mutual funds to use “fair value pricing,” eliminating the discrepancy that permitted companies like DH2 to profit with minimal risk. In reality, the challenged rules didn’t require the use of fair value pricing if “market quotations for their portfolio securities [were] not readily available.” *Id.* at 595 (quoting 69 Fed. Reg. 22304–05 (Apr. 23, 2004)). For that reason, we concluded that DH2 had not established that any injury it might have suffered would be fairly traceable to the SEC rules. *Id.* at 597. We observed that under the challenged rules, “mutual funds have the discretion to use fair value pricing in lieu of market quotations when circumstances warrant the conclusion that market quotations are no longer current.” *Id.* Thus, “to a significant degree, the injury DH2 complains of hinges on the decisions of independent actors whose discretion—though subject to securities laws and regulation by the SEC—is nonetheless quite broad.” *Id.* Given the discretion the funds retained, DH2 could not sue the SEC.

Like the funds in *DH2* and the hospitals in *Simon*, Illinois has discretion to determine eligibility for overseas absentee ballots under its election laws. That discretion is actually wider than the independent actors had in those cases, because there is *nothing* other than Illinois law preventing the plaintiffs from receiving ballots. Federal law doesn’t encourage Illinois not to offer the plaintiffs ballots. And the federal government doesn’t run the elections in Illinois, so, UOCAVA or not, whether the plaintiffs can obtain absentee ballots is entirely up to Illinois. Given that type of unfettered discretion

with respect to the plaintiffs, the federal government cannot be the cause of their injuries. Illinois has caused their injuries by failing to provide them ballots. Simply put, the plaintiffs cannot sue the federal government for failing to enact a law requiring Illinois to remedy their injury. Therefore, we hold that the plaintiffs lack standing to challenge the UOCAVA.<sup>1</sup>

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<sup>1</sup> Additionally, at least for the equal-protection claim, there may be an additional standing problem. The plaintiffs “must establish the district court’s jurisdiction over each of their claims independently.” *Rifkin v. Bear Stearns & Co., Inc.*, 248 F.3d 628, 634 (7th Cir. 2001). And we have serious doubts that the plaintiffs’ injury with respect to the equal-protection claim is “likely to be redressed by a favorable judicial decision” against the federal defendants. *Hollingsworth*, 133 S. Ct. at 2661. For even if we were to hold that the UOCAVA’s distinction among the territories violated the equal-protection component of the Due Process Clause, what would be the proper remedy? The Supreme Court has told us that “we must adopt the remedial course Congress likely would have chosen ‘had it been appraised of the constitutional infirmity.’” *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1701 (2017) (quoting *Levin v. Commerce Energy, Inc.*, 560 U.S. 413, 427 (2010)). Although the remedy in the run of cases would be to extend the favorable treatment (here, voting rights) to all, that would not hold when extension “would render the special treatment Congress prescribed ... the general rule, no longer an exception.” *Id.*

The caveat would seem to apply here, as the UOCAVA makes the Northern Mariana Islands the only United States territory treated as a foreign nation for the purposes of overseas voting. The other territories are considered part of the United States and therefore not subject to the UOCAVA’s requirement that they be permitted to vote in federal elections in their last state of residence. Under *Morales-Santana*, we should presume that Congress would have wanted the general rule—that U.S. territories are part of the United States—to control over the exception for the Northern Marianas. Therefore, instead of extending voting rights to all the territories, the proper remedy would be to extend them to none of the territories. That means a holding that the UOCAVA violates equal protection would not remedy the plaintiffs’ injuries.

## B. Constitutionality of the Illinois Law

Having decided that the plaintiffs lack standing to challenge the UOCAVA in the context of this case, we are left with their challenge to Illinois' overseas-voting law. The plaintiffs say the law violates the Equal Protection Clause as well as their right to interstate travel guaranteed by the Due Process Clause. We consider these arguments in turn.

### 1. Equal Protection

The plaintiffs first argue that the Illinois law should be subject to strict scrutiny. "[E]qual protection analysis requires strict scrutiny of a legislative classification only when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class." *Mass. Bd. of Retirement v. Murgia*, 427 U.S. 307, 312 (1976) (per curiam) (footnote omitted). To be sure, the right to vote "is a fundamental matter in a free and democratic society." *Reynolds v. Sims*, 377 U.S. 533, 561–62 (1964). But the residents of the territories have no fundamental right to vote in federal elections. The territories send no electors to vote for president or vice president and have no voting members in the United States Congress. See *Igartua v. United States*, 626 F.3d 592, 597–98 (1st Cir. 2010). Even residents of the District of Columbia had no federal voting rights at all until the Twenty-Third Amendment was ratified in 1961, allowing the District to designate three electors to vote with the Electoral College. Washington, D.C., still has no voting representation in the House of Representatives or the Senate. The unmistakable conclusion is that, absent a constitutional amendment, only residents of the 50 States have the right to vote in federal elections. The plaintiffs have no special right simply because they *used to* live in a State.

Nor do the plaintiffs constitute a suspect class. “A suspect class either ‘possesses an immutable characteristic determined solely by the accident of birth,’ or is one ‘saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.’” *St. John’s United Church of Christ v. City of Chicago*, 502 F.3d 616, 638 (7th Cir. 2007) (quoting *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973), and *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 28 (1973)). The plaintiffs’ current condition is not immutable, as nothing is preventing them from moving back to Illinois. And there has been no suggestion that the plaintiffs form a class of people historically subjected to unequal treatment. Indeed, we doubt that “people who move from a State to a territory” even constitute a class of people recognized by the law. Thus, we decline the plaintiffs’ invitation to apply strict scrutiny to the Illinois law.

Because the Illinois law does not affect a fundamental right or a suspect class, it need only satisfy rational-basis review. *Armour v. City of Indianapolis*, 132 S. Ct. 2073, 2080 (2012). That is, we will invalidate it only if there is no rational relationship between the law and some legitimate government purpose. *Id.* And while the distinction among United States territories may seem strange to an observer today, it made more sense when Illinois enacted the challenged definition. As the district court explained, in 1979 the Northern Mariana Islands were a Trust Territory, rather than a fully incorporated U.S. territory. See *Segovia I*, 201 F. Supp. 3d at 945–46. The covenant to establish a commonwealth in the Northern Marianas did not take effect until 1986. Meanwhile, American Samoa is still defined as an “outlying possession” under federal law,

and persons born there are American nationals, but not citizens. 8 U.S.C. §§ 1101(a)(29), 1408(1); *United States v. Karaouni*, 379 F.3d 1139, 1142-43 (9th Cir. 2004) (“All citizens of the United States are nationals, but some nationals, such as persons born in American Samoa and other U.S. territorial possessions, are not citizens.”). One could rationally conclude that these two territories were in 1979 more similar to foreign nations than were the incorporated territories where the plaintiffs reside. So, at least at the time, it was rational for Illinois to treat the Northern Marianas and American Samoa as foreign countries for the purposes of overseas absentee voting.

In the special context of this case, our conclusion that the Illinois definition was rational in 1979 controls the outcome. That is because even if the plaintiffs were correct and the definition at some point became irrational as the Northern Marianas and American Samoa became more integrated into the United States, it would not help the plaintiffs. They are injured specifically because Illinois defines their resident territories as *within* the United States. It would be perverse for us to tell Illinois that (1) its distinction made sense in 1979; (2) the current definition is arbitrary because the territories are more integrated into the United States; and so (3) the remedy is to *contract* voting rights for residents in the excluded territories (which it couldn’t do anyway because the Northern Marianas are treated as overseas under the UOCAVA). Rather than remove voting rights from its former residents in American Samoa, we think it rational for Illinois to retain the same definition it enacted nearly 40 years ago.

Finally, on a somewhat related note, we think it is significant that were we to require Illinois to grant overseas voting

rights to all its former citizens living in the territories, it would facilitate a larger class of “super citizens” of the territories. As the Second Circuit observed, further extending voting rights under the UOCAVA “would have created a distinction of questionable fairness among Puerto Rican U.S. citizens, some of whom would be able to vote for President and others not, depending whether they had previously resided in a State.” *Romeu v. Cohen*, 265 F.3d 118, 125 (2d Cir. 2001). The natural result, as we explained in the previous paragraph and in the first footnote, would be to treat all the territories as part of the United States, so that residing in a territory would give one the rights to participate in territorial elections, but not federal elections in one’s former State of residence. Until that happens, however, we see no reason to require Illinois to extend voting rights to its former residents living in Guam, Puerto Rico, and the Virgin Islands.

We affirm the district court’s judgment in favor of the state defendants on the equal-protection claim.

## **2. Right to Travel**

The plaintiffs also argue that the Illinois statute violates their due process right to interstate travel. This claim is borderline frivolous. The Second Circuit correctly explained that “[a] citizen’s decision to move away from her State of residence will inevitably involve certain losses. She will lose the right to participate in that State’s local elections, as well as its federal elections, the right to receive that State’s police protection at her place of residence, the right to benefit from the State’s welfare programs, and the right to the full benefits of the State’s public education system. Such consequences of the citizen’s choice do not constitute an unconstitutional interference with the right to travel.” *Id.* at 126–27. We agree. By

choosing to move to a territory, the plaintiffs gave up the right to vote in Illinois and gained the right to vote in territorial elections. The right to travel doesn't guarantee the plaintiffs anything more than the privileges afforded other territorial residents. See *Memorial Hosp. v. Maricopa County*, 415 U.S. 250, 261 (1974) ("The right of interstate travel must be seen as insuring new residents the same right to vital governmental benefits and privileges in the States to which they migrate as are enjoyed by other residents."). Therefore, the district court properly granted summary judgment to the state defendants.

### III. Conclusion

This is a strange case. The plaintiffs seek the right to continue to vote in federal elections in Illinois even though they are now residents of United States territories. In effect, the plaintiffs are upset that the territories to which they moved are considered under federal and state law to be *part of the United States* rather than overseas. They would like overseas voting rights while still living within the United States. No court has ever held that they are so entitled, and we will not be the first.

We hold that the plaintiffs lack standing to challenge the federal UOCAVA because their injury derives not from the federal statute, but from the failure of Illinois law to guarantee them absentee ballots. So we VACATE the portion of the district court's judgment in favor of the federal defendants and REMAND the case with instructions to dismiss the claims against the federal defendants for want of jurisdiction. With respect to the state defendants, however, we AFFIRM the portion of the judgment below that the Illinois law does not violate the Equal Protection Clause or the due-process right to interstate travel.

No. 17-1463

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**In the Supreme Court of the United States**

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LUIS SEGOVIA, ET AL., PETITIONERS

*v.*

UNITED STATES OF AMERICA, ET AL.

---

*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT*

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**BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION**

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### QUESTION PRESENTED

Whether residents of Puerto Rico, Guam, and the U.S. Virgin Islands who previously lived in Illinois and seek to vote absentee in federal elections in Illinois have standing to challenge the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. 20301 *et seq.*, on the ground that the Act fails to force Illinois to permit them to vote absentee.

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# In the Supreme Court of the United States

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LUIS SEGOVIA, ET AL., PETITIONERS

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT*

---

**BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION**

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## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-14a) is published at 880 F.3d 384. The opinions of the district court (Pet. App. 15a-69a, 70a-94a) are published at 201 F. Supp. 3d 924 and 218 F. Supp. 3d 643.

## **JURISDICTION**

The judgment of the court of appeals was entered on January 22, 2018 (Pet. App. 95a-96a). The petition for a writ of certiorari was filed on April 23, 2018. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## **STATEMENT**

1. Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 52 U.S.C. 20301 *et seq.* (Supp. IV 2016), among other reasons, “to protect the voting rights of United States citizens who move overseas but retain their American citizenship.” Pet. App. 2a. UOCAVA directs that “[e]ach State shall

\* \* \* permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 52 U.S.C. 20302(a)(1) (Supp. IV 2016). The statute defines an “overseas voter” as

(A) an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved;

(B) a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(C) a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.

52 U.S.C. 20310(5) (Supp. IV 2016). “Federal office” is defined under UOCAVA to mean “the office of President or Vice President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.” 52 U.S.C. 20310(3) (Supp. IV 2016). The statute defines “State” as “a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.” 52 U.S.C. 20310(6) (Supp. IV 2016). And it defines “‘United States,’ where used in the territorial sense,” to mean “the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, and American Samoa.” 52 U.S.C. 20310(8) (Supp. IV 2016).

Consistent with UOCAVA, Illinois allows certain “non-resident civilian citizen[s]” to vote absentee in federal elections. 10 Ill. Comp. Stat. Ann. 5/20-2.2 (West

Supp. 2018). To qualify as a “non-resident civilian citizen” under Illinois law, a non-military U.S. citizen must “reside outside the territorial limits of the United States,” *id.* 5/20-1(4)(a) (West 2015); have resided in Illinois immediately before moving overseas, *id.* 5/20-1(4)(b); and not “maintain a residence” or be “registered to vote in any other State,” *id.* 5/20-1(4)(c). The law defines the “[t]erritorial limits of the United States” to include “each of the several States of the United States,” as well as “the District of Columbia, the Commonwealth of Puerto Rico, Guam and the Virgin Islands; but \* \* \* not [to] include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands or any other territory or possession of the United States.” *Id.* 5/20-1(1).

2. Petitioners are residents of Puerto Rico, Guam, and the U.S. Virgin Islands who formerly resided in Illinois, along with two organizations whose members include residents of those same territories who formerly resided in Illinois. Pet. 7. Petitioners filed suit against various federal, state, and local entities and officials alleging that UOCAVA and Illinois law violate their right to equal protection and their due process right to travel. Pet. App. 2a. Petitioners based their equal protection argument on the ground that Illinois authorizes absentee voting by citizens who move from Illinois to the Northern Mariana Islands or American Samoa, but not by citizens who move to Puerto Rico, Guam, or the U.S. Virgin Islands. *Id.* at 1a-2a.

a. The district court granted summary judgment in favor of the federal respondents on petitioners’ equal protection challenge to UOCAVA. Pet. App. 15a-69a. With respect to standing, the court held that petitioners had alleged an injury that was traceable to those respondents. *Id.* at 30a-37a. The court acknowledged that

“the federal [respondents] have no role in accepting or rejecting Illinois absentee ballots.” *Id.* at 36a. The court nevertheless concluded that the federal respondents “are responsible for the terms of the UOCAVA,” and “Illinois’ ability to provide redress” for petitioners’ alleged injury “does not insulate the federal [respondents] from liability.” *Ibid.*

On the merits, the district court rejected petitioners’ equal protection claim. Pet. App. 37a-68a. Because “[c]itizens residing in territories do not have a constitutional right to vote as citizens of a state do,” the court explained, petitioners had not identified any fundamental right of which they had been deprived. *Id.* at 44a. The court accordingly declined to apply strict scrutiny, finding rational basis review to be the appropriate standard. See *id.* at 47a (“[W]here there is no constitutionally protected right to vote, a state’s law extending the right to vote to some non-residents does not implicate strict scrutiny.”) (brackets, citation, and internal quotation marks omitted).

Applying such review to petitioners’ equal protection claim, the district court concluded that UOCAVA’s extension of absentee-voting rights to the residents of some but not other federal territories was supported by an adequate “rational reason.” Pet. App. 57a-58a. Among other things, the court pointed to the unique “historical relationship with the United States” that differentiates some territories from others. *Id.* at 54a; see *id.* at 54a-65a (contrasting political history of the Northern Mariana Islands with that of Puerto Rico, Guam, and the U.S. Virgin Islands). The court explained that “Congress could have reasonably concluded,” based on that history, that the territories treated as foreign under the statute were “more analogous to a foreign country”

than were the territories in which petitioners reside. *Id.* at 62a. Finally, the court emphasized that the relief requested by petitioners—an order granting absentee-voting rights to residents of Puerto Rico, Guam, and the U.S. Virgin Islands who previously had lived in Illinois—would itself create a “distinction of questionable fairness,” because it would “differentiate between residents living in a particular United States Territory based on whether they could previously vote in a federal election administered by a state.” *Id.* at 66a-67a (quoting *Romeu v. Cohen*, 265 F.3d 118, 125 (2d Cir. 2001)).

b. In a separate decision, the district court granted judgment against petitioners on their remaining claims. Pet. App. 70a-94a. Applying rational basis review to petitioners’ equal protection challenge against Illinois law, the court concluded that Illinois “had a legitimate state interest” in treating residents of American Samoa and the Northern Mariana Islands differently from residents of Puerto Rico, Guam, and the U.S. Virgin Islands. *Id.* at 84a; see *id.* at 83a-89a. The court also rejected petitioners’ claim that UOCAVA and Illinois law violated petitioners’ “fundamental right to interstate travel,” as protected by “the substantive component of due process.” *Id.* at 89a (citation omitted); see *id.* at 89a-93a.

3. The court of appeals vacated and remanded in part, and affirmed in part. Pet. App. 1a-14a. As relevant here, the court first held that petitioners lacked standing to challenge UOCAVA on equal protection grounds because their injuries were not traceable to the federal law, which simply sets minimum requirements for state absentee-voting provisions and does not prevent Illinois from accepting petitioners’ absentee ballots. *Id.* at 5a-8a. Under Article III, the court explained, “a federal court [can] act only to redress injury

that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court.” *Id.* at 6a (quoting *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976)). In this case, the court observed, “the reason [petitioners] cannot vote in federal elections in Illinois is not the UOCAVA, but Illinois’ own election law.” *Id.* at 5a-6a; see *id.* at 2a (“To the extent [petitioners] are injured, it is because they are not entitled to ballots under state law.”). The court therefore vacated the district court’s decision insofar as it ruled for the federal respondents on the merits of petitioners’ equal protection claim and remanded with instructions to dismiss the claim “for want of jurisdiction.” *Id.* at 14a.

With respect to the state defendants, the court of appeals rejected petitioners’ equal protection challenge to the Illinois election law. Pet. App. 9a-13a. The court declined to apply strict scrutiny to petitioners’ claim, explaining that residents of the territories do not have a fundamental right to vote in federal elections, and that petitioners “have no special right [to do so] simply because they *used to* live in a state.” *Id.* at 10a. Applying rational basis review, the court agreed with the district court’s conclusion that Illinois had a rational basis for declining to permit petitioners to vote absentee. When Illinois enacted its statutory definition of “the United States” in 1979, the court of appeals observed, “the Northern Mariana Islands were a Trust Territory, rather than a fully incorporated U.S. territory.” *Id.* at 11a. American Samoa, moreover, was and “is still defined as an ‘outlying possession’ under federal law, and persons born there are American nationals, but not citizens.” *Ibid.* Accordingly, the court explained, “[o]ne

could rationally conclude that these two territories were in 1979 more similar to foreign nations than were the incorporated territories where [petitioners] reside." *Ibid.*

The court of appeals further concluded that, "[i]n the special context of this case," it was "rational for Illinois to retain the same definition it enacted nearly 40 years ago," particularly since changing its definition to account for the increased integration into the United States of the Northern Mariana Islands and American Samoa would have the "perverse" effect of "*contract[ing]* voting rights for residents in the excluded territories." Pet. App. 11a-12a. The court also echoed the district court's concern that requiring Illinois to grant overseas voting rights to all former state residents living in the territories would promote "a distinction of questionable fairness," by favoring territorial residents who had previously lived in a state over territorial residents who had not. *Id.* at 12a (citation omitted).

#### ARGUMENT

Petitioners argue (Pet. 14-23) that the court of appeals erred in holding that petitioners lack standing to challenge UOCAVA. Contrary to petitioners' characterization, however, the court did not hold that an injury "is not fairly traceable to a federal government action so long as some *other* government body retains the ability to remedy the injury inflicted." Pet. 14. Rather, the court held simply that UOCAVA was not the source of petitioners' injury because petitioners' lack of voting eligibility is due to state, rather than federal, law. That decision is correct and does not conflict with any decision of this Court or another court of appeals. In any event, petitioners' equal protection challenge to UOCAVA is without merit, as all other courts of appeals to consider similar challenges have held.

1. A plaintiff who seeks to establish standing “must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547 (2016). To satisfy the second requirement of traceability, the plaintiff need not establish that “the defendant’s actions [we]re the very last step in the chain of causation”; it may suffice that the defendant exerted “determinative or coercive effect upon the action of someone else.” *Bennett v. Spear*, 520 U.S. 154, 169 (1997). But the plaintiff must seek to “redress [an] injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party.” *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1976).

In this case, petitioners “desire to have a vote in” federal elections in Illinois and allege that, as a result of UOCAVA, they have been illegally “exclu[ded] from the basic right to participate in [those] elections.” Pet. 2; see Pet. App. 16a (petitioners allege that UOCAVA “violates their equal protection and due process rights by barring them from casting absentee ballots in Illinois”). As the court of appeals explained, however, “the reason [petitioners] cannot vote in federal elections in Illinois is not the UOCAVA, but Illinois’ own election law.” Pet. App. 5a-6a. UOCAVA “requires Illinois to provide absentee ballots for its former residents living in the Northern Mariana Islands, but it does not *prohibit* Illinois from providing such ballots to former residents in Guam, Puerto Rico, and the Virgin Islands.” *Id.* at 5a. If Congress repealed UOCAVA tomorrow, petitioners would not gain the right they seek to participate in fed-

eral elections. Petitioners' alleged injury—their inability to vote absentee in federal elections in Illinois—thus is not “fairly traceable to the challenged conduct of” the federal respondents. *Spokeo*, 136 S. Ct. at 1547.

Even assuming that petitioners' injury could instead be characterized as abstract harm from the “differential treatment” afforded to citizens in the Northern Mariana Islands (Pet. 6), that harm would still not be attributable to UOCAVA. Federal law does not require such differential treatment; Illinois law does. Illinois has chosen, for instance, to afford absentee voting rights to former residents who move to American Samoa. Pet. App. 5a. Illinois could have, but has not, chosen to extend the same absentee voting rights to former residents who move to other territories. As the court of appeals correctly concluded, nothing in federal law prevents Illinois from affording absentee voting rights “to former residents in Guam, Puerto Rico, and the Virgin Islands. \* \* \* [I]t simply doesn't.” *Ibid.*

2. Petitioners argue (Pet. 15-22) that the decision below conflicts with this Court's decisions and with decisions of other courts of appeals. The premise of petitioners' entire argument is mistaken. The Seventh Circuit did not hold “that a plaintiff lacks standing to sue the federal government regarding an unconstitutional federal statute whenever an ‘independent party’ has ‘discretion’ to counteract the federal defendant's unlawful action.” Pet. 15. The Seventh Circuit thus did not hold that petitioners lack standing to challenge UOCAVA because Illinois has the “discretion” to “counteract” any harm caused to them by federal law. *Ibid.* Rather, the court held that petitioners lack standing because federal law has not harmed them: “Illinois has discretion to determine eligibility for absentee ballots under its

election laws,” and “so, UOCAVA or not, whether the plaintiffs can obtain absentee ballots is entirely up to Illinois” and “the federal government cannot be the cause of their injuries.” Pet. App. 7a.

Petitioners cite (Pet. 16) various decisions in which this Court has purportedly “recognize[d] plaintiffs’ standing to challenge government action that authorizes or fails to prevent injurious third-party actions.” But the decisions cited by petitioners do not directly address the Article III traceability requirement at all. See *Japan Whaling Ass’n v. American Cetacean Soc’y*, 478 U.S. 221, 230 n.4 (1986) (rejecting the Secretary of Commerce’s argument “that no private cause of action [wa]s available to” the plaintiffs, because a right of action was “expressly created by the Administrative Procedure Act,” and the plaintiffs’ claimed injury was “within the ‘zone of interests’ protected by” the statute invoked); *Barlow v. Collins*, 397 U.S. 159, 164 (1970) (holding that plaintiffs “have the personal stake and interest that impart the concrete adverseness required by Article III”); *Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 152-153 (1970) (*Camp*) (concluding that the plaintiffs had adequately “allege[d] that the challenged action has caused [them] injury in fact,” and that “the interest sought to be protected by the [petitioners wa]s arguably within the zone of interests to be protected or regulated”).

The federal actions challenged in those cases, moreover, had the legal effect of “authoriz[ing]” (Pet. 16) third parties to injure the plaintiffs. See *Japan Whaling Ass’n*, 478 U.S. at 226-229 (Secretary of Commerce declined to certify Japan’s fishing in excess of treaty quotas, where certification would have “require[d] the imposition of sanctions” under federal law); *Barlow*,

397 U.S. at 160-163 (Secretary of Agriculture promulgated regulation authorizing landlords to seek certain payments from tenants under Food and Agriculture Act); *Camp*, 397 U.S. at 151 (Comptroller of the Currency issued ruling authorizing national banks to “make data processing services available to other banks and to bank customers”). UOCAVA has no similar “authorizing” effect here: Wholly irrespective of any federal requirement, Illinois “law could provide [petitioners] the ballots they seek; it simply doesn’t.” Pet. App. 5a.

Petitioners are also incorrect in arguing (Pet. 18-22) that the decision below conflicts with decisions from other courts of appeals. Petitioners note that two courts of appeals have addressed the merits of equal protection challenges to UOCAVA—and both rejected them. Pet. 18 (citing *Romeu v. Cohen*, 265 F.3d 118 (2d Cir. 2001); *Igartua de la Rosa v. United States*, 32 F.3d 8 (1st Cir. 1994) (per curiam), cert. denied, 514 U.S. 1049 (1995)). Yet neither of those decisions discussed or ruled on the plaintiffs’ standing. This Court has cautioned that its own “‘drive-by jurisdictional rulings’ \* \* \* should be accorded ‘no precedential effect.’” *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 511 (2006) (quoting *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 91 (1998)). The same is true *a fortiori* for drive-by jurisdictional rulings by the courts of appeals, especially since, as petitioners acknowledge (Pet. 19 n.4), the plaintiffs in those cases alleged a somewhat different type of injury than petitioners allege here.

The decision below likewise does not conflict, as petitioners claim (Pet. 19), with “other federal appellate decisions that have repeatedly recognized standing in circumstances of multiple or concurrent causation.” The court of appeals did not reject the possibility of standing

to sue a defendant who, in conjunction with others, causes the plaintiff's alleged injury. Rather, it held on the facts of this case that petitioners' injury was not caused by UOCAVA. See pp. 8-10, *supra*. For that reason, there is also no conflict (Pet. 19-20) with decisions in which a federal actor was found to have caused harm in combination with, or in addition to, harm caused by a state actor. See, e.g., *Khodara Envtl., Inc. v. Blakey*, 376 F.3d 187, 195 (3d Cir. 2004) (Alito, J.) (plaintiff's alleged harm was caused by "two obstacles," one imposed by the federal government and one by the State).

Nor does UOCAVA have the effect of exempting the States from any federal requirement, see *National Parks Conservation Ass'n v. Manson*, 414 F.3d 1, 3-4 (D.C. Cir. 2005) (Department of Interior issued letter that had legal effect of authorizing Montana to issue permit without satisfying additional federal requirements), or of authorizing the States to take an injurious action that otherwise would have been forbidden by federal law, see *Scenic Am., Inc. v. United States Dep't of Transp.*, 836 F.3d 42, 46-47 (D.C. Cir. 2016) (Federal Highway Administration issued guidance "permitting" States to put up digital billboards that otherwise would have been forbidden by Highway Beautification Act) (citation omitted), cert. denied, 138 S. Ct. 2 (2017). Petitioners identify no decision in which plaintiffs were found to have standing to challenge a federal law even though, as here, "there [wa]s *nothing* other than [state] law preventing the plaintiffs from receiving" their desired remedy. Pet. App. 7a.

3. In any event, review of the court of appeals' standing analysis would have no effect on the outcome of this case because UOCAVA is constitutional, as both courts of appeals to address challenges to the law on the

merits have held. See *Romeu*, 265 F.3d at 124-125 (rejecting equal protection challenge); *Igartua de la Rosa*, 32 F.3d. at 10-11 (similar); see also Pet. App. 37a-68a (district court decision rejecting petitioners' equal protection claim). Petitioners do not directly raise UOCAVA's merits. They argue instead that the court of appeals erred in holding that "UOCAVA \* \* \* need only satisfy rational-basis review." Pet. 24; see Pet. 25. But the court applied rational basis review to *state election law*, not UOCAVA. See Pet. App. 10a ("Because the Illinois law does not affect a fundamental right or a suspect class, it need only satisfy rational-basis review."). Because the court rejected petitioners' equal protection challenge to UOCAVA for lack of standing, it vacated the district court's merits ruling and remanded with instructions to dismiss the claim "for want of jurisdiction." *Id.* at 14a. Accordingly, this case does not present any question regarding the proper standard for reviewing such a claim on the merits.

Even if the court below had applied rational basis review to petitioners' equal protection challenge to UOCAVA, that ruling would not have created any conflict regarding the proper standard for reviewing such challenges. See *Romeu*, 265 F.3d at 124 (finding no merit in plaintiff's equal protection claim "regardless whether [UOCAVA] is appropriately analyzed under rational basis review or intermediate scrutiny, or under some alternative analytic framework independent of the three-tier standard that has been established in Equal Protection cases"); *Igartua de la Rosa*, 32 F.3d at 10 (determining that UOCAVA "need only have a rational basis to pass constitutional muster"). Further review is not warranted.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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AUGUST 2018

(ORDER LIST: 586 U.S.)

TUESDAY, OCTOBER 9, 2018\*

**CERTIORARI -- SUMMARY DISPOSITIONS**

17-1428 NIANG, NDIوبا, ET AL. V. TOMBLINSON, BRITTANY, ET AL.

The petition for a writ of certiorari is granted. The judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded to that court with instructions to direct the District Court to dismiss the case as moot. See *United States v. Munsingwear, Inc.*, 340 U. S. 36 (1950).

17-8381 FRAZIER, WILLIAM V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *Sessions v. Dimaya*, 584 U. S. \_\_\_\_ (2018).

**ORDERS IN PENDING CASES**

18M39 STRONG, JOEL D. V. BURT, WARDEN

18M40 PFEFFER, ALBA T. V. WELLS FARGO ADVISORS, ET AL.

18M41 WILLIAMS, ANTYWANE E. V. COX, JUDGE, ET AL.

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

\* Justice Kavanaugh took no part in the consideration or decision of the motions or petitions appearing on this Order List.

18M42 LASCHKEWITSCH, JOHN V. AMERICAN NATIONAL LIFE INSURANCE

18M43 WAIRI, JOSH A. V. UNITED STATES

18M44 JOHNSON, DION D. V. UNITED STATES

The motions for leave to file petitions for writs of certiorari with the supplemental appendices under seal are granted.

18M45 ADAMS, RAYMOND E. V. UNITED STATES

18M46 MOSS, JUSTIN A. V. POLLARD, WARDEN

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

18M47 RUIZ, RANDAL V. DIAZ, ACTING SEC., CA DOC

The motion to direct the Clerk to file a petition for a writ of certiorari out of time under Rule 14.5 is denied.

18M48 KILPATRICK, GREGORY D. V. KAMKAR, SAHAR

18M49 SYLINCE, PHARES V. FLORIDA

The motions to direct the Clerk to file petitions for writs of certiorari out of time are denied.

16-1094 SUDAN V. HARRISON, RICK, ET AL.

16-1498 WA DEPT. OF LICENSING V. COUGAR DEN, INC.

The motions of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument are granted.

17-419 DAWSON, JAMES, ET UX. V. STEAGER, WV STATE TAX COMM'R

The motion of the Acting Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

17-949 STURGEON, JOHN V. FROST, BERT, ET AL.

- The motion of Alaska for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.
- 17-1026 GARZA, GILBERTO V. IDAHO
- The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.
- 17-1107 CARPENTER, INTERIM WARDEN V. MURPHY, PATRICK D.
- The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted. Justice Gorsuch took no part in the consideration or decision of this motion.
- 17-1174 NIEVES, LUIS A., ET AL. V. BARTLETT, RUSSELL P.
- The motion of respondent to file volume II of the joint appendix under seal is granted.
- 17-1229 HELSINN HEALTHCARE V. TEVA PHARMACEUTICALS
- The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.
- 18-164 FIRST SOLAR, INC., ET AL. V. MINEWORKERS' PENSION, ET AL.
- The Solicitor General is invited to file a brief in this case expressing the views of the United States.
- 18-351 PENSACOLA, FL, ET AL. V. KONDRAT'YEV, AMANDA, ET AL.
- The motion of petitioners to expedite consideration of the petition for a writ of certiorari is denied.
- 18-5401 POIRIER, MELISSA J. V. MA DOC
- 18-5567 CURRY, CARLINE V. MANSFIELD, OH, ET AL.
- 18-5568 CURRY, CARLINE V. MANSFIELD, OH, ET AL.

The motions of petitioners for leave to proceed *in forma pauperis* are denied. Petitioners are allowed until October 30, 2018, within which to pay the docketing fees required by Rule 38(a) and to submit petitions in compliance with Rule 33.1 of the Rules of this Court.

**CERTIORARI DENIED**

17-1318 KINDRED NURSING CENTERS, ET AL. V. WELLNER, BEVERLY  
17-1463 SEGOVIA, LUIS, ET AL. V. UNITED STATES, ET AL.  
17-1483 ALEXSAM, INC. V. WILDCARD SYSTEMS, INC., ET AL.  
17-1499 RP HEALTHCARE, INC., ET AL. V. RANBAXY PHARMACEUTICALS, ET AL.  
17-1510 VEAL, ROBERT V. GEORGIA  
17-1559 VILLEGAS-SARABIA, LEONARDO V. SESSIONS, ATT'Y GEN.  
17-1566 LACAZE, ROGERS V. LOUISIANA  
17-1607 FAIRLEY, KENNETH E. V. UNITED STATES  
17-1610 JONES, CLIFFORD W. V. DEPT. OF H&HS  
17-1611 HILLSMAN, ROBERT G. V. ESCOTO, MARK J.  
17-1699 MR. P., ET UX. V. WEST HARTFORD BOARD OF EDUCATION  
17-1703 ) HONEYWELL INTERNATIONAL, ET AL. V. MEXICHEM FLUOR INC., ET AL.  
18-2 ) ) NATURAL RESOURCES DEFENSE V. MEXICHEM FLUOR, INC., ET AL.  
17-8382 GLOVER, ERNEST M., ET AL. V. UNITED STATES  
17-8558 LONG, GILLMAN R. V. UNITED STATES  
17-8801 DEL MONTE, AMILKA V. UNITED STATES  
17-9000 ACOSTA, GABRIEL A. V. RAEMISCH, EXEC. DIR., CO DOC  
17-9130 POTENCIANO, GRACIELA V. UNITED STATES  
17-9159 WARD, BRUCE E. V. ARKANSAS  
17-9549 ZACK, MICHAEL D. V. JONES, SEC., FL DOC, ET AL.  
18-108 DUNCAN, DAVID V. GEICO GENERAL INSURANCE CO.

18-115 WYNN, KIMOTHY M. V. WASHINGTON

18-116 REARDON, JOHN E. V. ZONIES, DANIEL B., ET AL.

18-118 SCHWARTZ, JEFF, ET UX. V. JPMORGAN CHASE BANK, ET AL.

18-128 ABOUELMAGD, MOHAMED V. NEWELL, DEBRA

18-129 W. S. V. S. T., ET UX.

18-132 ELMHIRST, JAMIE V. McLAREN NORTHERN MI, ET AL.

18-136 DREYER, CATHERINE R. V. COUNTY COURT OF TX, COLEMAN CTY.

18-142 BARONI, ALLANA V. BANK OF NEW YORK MELLON

18-147 SCOTT, KAREN H. V. DISTRICT HOSPITAL PARTNERS, L.P.

18-148 LOTHIAN CASSIDY, LLC, ET AL. V. LOTHIAN EXPLORATION, ET AL.

18-151 PETIT-CLAIR, ALFRED J., ET AL. V. GREWAL, ATT'Y GEN. OF NJ, ET AL.

18-152 GARMONG, GREGORY V. SUPREME COURT OF NV, ET AL.

18-156 BRADY, JAMES H. V. GOLDMAN, JOHN, ET AL.

18-157 BRADY, JAMES H. V. UNDERWOOD, ATT'Y GEN. OF NY

18-158 GEBHARDT, RICHARD V. NIELSEN, SEC. OF HOMELAND

18-166 PROBANDT, JOHN M., ET AL. V. WALKER, DENNIS P.

18-169 LABER, LANCE V. MILBERG LLP, ET AL.

18-171 SNYDER, ROBERT R. V. CA DOC, ET AL.

18-172 HERNANDEZ, ALFONSO A. V. SESSIONS, ATT'Y GEN.

18-173 SUN, XIU J. V. ZEVE, OREN L.

18-183 ADVANCED AUDIO DEVICES, LLC V. HTC CORPORATION, ET AL.

18-184 AYANBADEJO, JOHN V. SIEGL, MARK, ET AL.

18-197 WADE, E. K. V. ACOSTA, SEC. OF LABOR, ET AL.

18-207 DUGGAN, GEORGE V. DEPT. OF DEFENSE

18-211 HURD, STEVEN M. V. CALIFORNIA

18-237 ) THOMAS, GARY, ET AL. V. UNITED STATES

18-240 ) TANG YUK, KIRK V. UNITED STATES

18-249 CONNOR, MADELEINE V. CASTRO, ERIC, ET AL.  
18-250 CHEN, TU Y. V. SUFFOLK COUNTY COLLEGE, ET AL.  
18-253 FELIX, MICHAEL V. NEW YORK  
18-256 BARTLETT, ROBERT, ET AL. V. HONEYWELL INTERNATIONAL, INC.  
18-270 PHILLIPS, DAMIAN V. UNITED STATES  
18-291 JAISINGHANI, GUL V. SHARMA, ANIL, ET AL.  
18-312 SMITH, DAVID V. TENNESSEE NATIONAL GUARD  
18-5036 MARTINEZ, JEROME A. V. UNITED STATES  
18-5038 SWEENEY, NEIL V. UNITED STATES  
18-5039 ROWLAND, GUY K. V. CHAPPELL, WARDEN  
18-5164 BROOKS, GEORGE A. V. UNITED STATES  
18-5217 PEREZ, AUDY V. UNITED STATES  
18-5285 SINGH, DANAVAN V. SESSIONS, ATT'Y GEN.  
18-5352 BROWN, PAUL A. V. FLORIDA  
18-5359 SUGGS, ERNEST D. V. FLORIDA  
18-5376 GERALDS, MARK A. V. FLORIDA  
18-5387 SMITH, JOHN G. V. WASHINGTON  
18-5395 MEZZLES, WAYNE C. V. KATAVICH, WARDEN  
18-5402 POPE, THOMAS D. V. FLORIDA  
18-5403 DENNIS, LEROY D. V. OKLAHOMA  
18-5410 PODARAS, CHARLES V. MENLO PARK, CA, ET AL.  
18-5411 MEHMETI, SUBI V. JOFAZ TRANSPORTATION INC.  
18-5412 JOHNSON, ROBERT E. V. VIRGINIA  
18-5413 LEWIS, CLARENCE D. V. HEDGEMON, JOHNNY, ET AL.  
18-5415 GASKIN, LOUIS B. V. FLORIDA  
18-5420 HEAGY, TYLER T. V. PENNSYLVANIA  
18-5424 SAKUMA, PATSY N. V. APARTMENT OWNERS, ET AL.

18-5425 RAMIREZ, JOSE J. V. APONTE, JOSEPH, ET AL.  
18-5429 GARRY, MICHAEL V. TRANE CO.  
18-5432 SANKARA, AHMADOU V. O'HARA, LIAM, ET AL.  
18-5434 VICTORINO, TROY V. FLORIDA  
18-5437 WHITTON, GARY R. V. FLORIDA  
18-5440 LOMAX, LARENZO V. VANNOY, WARDEN  
18-5441 BYRD, MILFORD W. V. FLORIDA  
18-5442 WALL, CRAIG A. V. FLORIDA  
18-5443 DeGRATE, ANTOINE D. V. DAVIS, DIR., TX DCJ  
18-5446 STORY, ALLAN L. V. DAVIS, DIR. TX DCJ  
18-5447 ROCK, DAVID V. V. BRACY, WARDEN  
18-5448 PACKENHAM STANLEY, ELLEN E. V. BERRYHILL, NANCY A.  
18-5450 RIVAS-RIVERA, AMILCAR V. PENNSYLVANIA  
18-5451 STEELE, CHARLES M. V. JENKINS, WARDEN, ET AL.  
18-5453 ELLIOTT, MARK V. PALMER, WARDEN  
18-5457 KENNEDY, MICHAEL A. V. TEXAS  
18-5459 WARNELL, ZACHARY D. V. TEXAS  
18-5460 HILL, DAVID V. REINKE, BRENT, ET AL.  
18-5463 KENNEDY, MICHAEL V. DAVIS, DIR., TX DCJ  
18-5465 DREYFUSE, JESSE V. JUSTICE, GOV. OF WV  
18-5476 ISMAIYL, ABDUL H. V. BROWN, FATIMAH D., ET AL.  
18-5477 EBRON, THOMAS V. BROWN, KAREN D.  
18-5478 JENNINGS, RYAN V. DEUTSCHE BANK, ET AL.  
18-5479 JACKSON, TADAREOUS V. DAVIS, DIR., TX DCJ  
18-5481 WATSON, JOHN K. V. VIRGINIA  
18-5485 WASHINGTON, WILLIAM N. V. ARNOLD, WARDEN  
18-5486 QUINTANA, CELESTINO V. HANSEN, MATTHEW, ET AL.

18-5489 KWON; MIN H. V. WON, HYOUN P., ET AL.  
18-5491 LOVIN, GLEN H. V. ALLBAUGH, DIR., OK DOC  
18-5493 GANT, MACEO V. WINN, WARDEN  
18-5494 MILAM, BLAINE K. V. DAVIS, DIR., TX DCJ  
18-5496 PEREZ, ALFREDO V. CALIFORNIA  
18-5498 CURTIS, WILLIE BEASLEY V. MICHIGAN  
18-5499 SANCHEZ, HILARIO V. DAVIS, DIR., TX DCJ  
18-5501 JONES, DONALD V. BANK OF AMERICA, ET AL.  
18-5502 JACOBSON, SUSAN J. V. ARIZONA  
18-5503 PRESTON, BRIAN V. GREAT LAKES SPECIALTY FINANCE  
18-5506 SUNDAY, TIM V. FRIENDSHIP PAVILION, ET AL.  
18-5507 SCHWARZMAN, MARK V. GRAY, WARDEN  
18-5512 WILSON, GEORGE C. V. WISCONSIN  
18-5513 TRAN, MY VAN V. SHELDON, WARDEN  
18-5514 WILKINS, ROBERT A. V. VIRGINIA  
18-5523 SANCHEZ, CHRIS V. DAVIS, DIR., TX DCJ  
18-5531 CULVER, KELLY E. V. ZATECKY, SUPT., PENDLETON  
18-5540 RUSH, DARNELL V. REWERTS, WARDEN  
18-5544 LE, VAN V. ALDRIDGE, WARDEN  
18-5545 LOPEZ, CARLOS D. V. CALIFORNIA  
18-5546 COBLE, BILLIE W. V. DAVIS, DIR., TX DCJ  
18-5553 WILLIAMS, CHRISTOPHER V. TEXAS  
18-5566 LIBRACE, DAVID V. BERRYHILL, NANCY A.  
18-5573 WILLIAMS, TAJUAN V. CAMPBELL, WARDEN  
18-5600 BONNER, ANDREW K. V. UNITED STATES, ET AL.  
18-5609 LaJEUNESSE, MICHAEL A. V. IOWA  
18-5616 CLAYBORNE, ROBERT E. V. NEBRASKA

18-5623 WILLIAMS, GARLAND E. V. UNITED STATES, ET AL.  
18-5633 KENNEDY, MICHAEL A. V. MI STATE TREASURER  
18-5639 CASTLEMAN, DANIEL V. UNITED STATES  
18-5657 PASSMORE, TERENCE V. O'FALLON, DAN, ET AL.  
18-5661 WILLIAMS, CALVIN V. SAMSON RESOURCES CORP., ET AL.  
18-5666 DENNISON, ARTHUR V. HOOKS, WARDEN  
18-5669 CRUZ, PETER V. MASSACHUSETTS  
18-5688 EMANUEL, JOSEPH V. DEPT. OF JUSTICE  
18-5689 BRIDGETTE, GEORGE V. ASUNCION, WARDEN, ET AL.  
18-5698 BROWN, DEVONTE V. OHIO  
18-5713 DUNNING, LEONARD E. V. WARE, NANCY M.  
18-5743 SIMMONS, JOYCE V. UNITED STATES  
18-5747 AMADOR-FLORES, JAVIER V. UNITED STATES  
18-5749 AGOLLI, ANNA M. V. DISTRICT OF COLUMBIA, ET AL.  
18-5750 CUEVAS, SANTOS V. KELLY, SUPT., OR  
18-5753 PELLO, JAMES V. ZATECKY, SUPT., PENDLETON  
18-5797 GUTIERREZ-TORRES, CARLOS V. UNITED STATES  
18-5800 WILLIAMS, BRENT F. V. UNITED STATES  
18-5803 DURY, MATTHEW J. V. UNITED STATES  
18-5804 DIALLO, ABDOULAYE V. UNITED STATES  
18-5808 RONDON, RAFAEL A. V. UNITED STATES  
18-5809 SHARP, ROBERT C. V. UNITED STATES  
18-5814 CRUZ, BOBBY V. UNITED STATES  
18-5817 MOORER, JERMAINE V. UNITED STATES  
18-5823 MARSHALL, ALONZO D. V. UNITED STATES  
18-5824 LARIVE, JAMES E. V. UNITED STATES  
18-5825 JOHNSON, ERIC L. V. UNITED STATES

18-5826 CARTER, JOHN C. V. CALDWELL, WARDEN  
18-5828 LOPEZ-GARCIA, ADOLFO V. UNITED STATES  
18-5831 CURRY, WILLIE R. V. UNITED STATES  
18-5835 LIZARRAGA-LEYVA, JUAN F. V. UNITED STATES  
18-5839 REBMANN, JAMES F. V. UNITED STATES  
18-5840 STONEY, GEORGE V. UNITED STATES  
18-5842 CHHEA, RICKY B. V. DELBALSO, SUPT., MAHANOY, ET AL.  
18-5844 TINOCO, ROCCO V. UNITED STATES  
18-5845 PIERCE, DAVID L. V. UNITED STATES  
18-5846 WILKINS, DUSTIN X. V. UNITED STATES  
18-5847 GARCIA, JAIME S. V. UNITED STATES  
18-5849 SOZA, JOSE V. JONES, SEC., FL DOC, ET AL.  
18-5858 GLOOR, LANCE E. V. UNITED STATES  
18-5861 CHAVEZ, DANNY L. V. MARTINEZ, WARDEN  
18-5865 PENNINGTON, GARY L. V. CLARK, SUPT., ALBION, ET AL.  
18-5866 MOSLEY, NATHAN V. UNITED STATES  
18-5871 POSA, SAMUEL V. UNITED STATES  
18-5872 MEDINA-REYES, MIGUEL V. UNITED STATES  
18-5874 EDWARDS, NALENZER L. V. UNITED STATES  
18-5875 VIVO, JOHN V. CONNECTICUT  
18-5879 ENEH, EMORY D. V. UNITED STATES  
18-5882 VELA, DANIEL V. UNITED STATES  
18-5884 RICHARDSON, MATTHEW G. V. UNITED STATES  
18-5885 SHANNON, KENNETH K. V. UNITED STATES  
18-5890 WHITFIELD, MARK D. V. UNITED STATES  
18-5893 STREETMAN, DAN W. V. UNITED STATES  
18-5894 SHAW, LAWRENCE E. V. UNITED STATES

18-5895 IZATT, JUSTIN L. V. UNITED STATES  
18-5896 BAKER, BEVERLY A. V. UNITED STATES  
18-5899 LEWIS, RASHOD V. UNITED STATES  
18-5900 MARTINEZ-BARRIENTOS, JUAN C. V. UNITED STATES  
18-5901 MAXI, WILLIS V. UNITED STATES  
18-5904 CROSS, DONAVAN V. UNITED STATES  
18-5910 PACKARD, CURTIS D. V. GOODRICH, WARDEN, ET AL.  
18-5912 KIMMELL, ROBERT V. UNITED STATES  
18-5913 GARCIA, ALFONSO E. V. UNITED STATES  
18-5914 FINNEY, JEFFREY S. V. UNITED STATES  
18-5915 HILL, MICHAEL V. UNITED STATES  
18-5916 FLORES, JUAN V. UNITED STATES  
18-5917 DOE, JOHN V. UNITED STATES  
18-5921 STEVENS, JEFFREY A. V. UNITED STATES  
18-5928 LIMON-URENDA, RICARDO V. UNITED STATES  
18-5929 ODOM, DAVID T. V. UNITED STATES  
18-5933 WILKERSON, MARY V. UNITED STATES  
18-5934 WAGNER, DEBORAH M. V. UNITED STATES  
18-5935 VELASQUEZ, JULIO C. V. UNITED STATES  
18-5944 TANCO-PIZARRO, RAFAEL V. UNITED STATES  
18-5953 THORNE, ANTOWAN V. UNITED STATES  
18-5984 BEYAH, MURAD H. V. NEW JERSEY

The petitions for writs of certiorari are denied.

18-35 PENNSYLVANIA V. JOHNSON, RODERICK A.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

18-112 DAY, JUDGE V. OR COMM'N ON JUDICIAL FITNESS

The motion of Freedom of Conscience Defense Fund for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

18-210 BATS GLOBAL MARKETS, ET AL. V. PROVIDENCE, RI, ET AL.

The petition for a writ of certiorari is denied. Justice Breyer took no part in the consideration or decision of this petition.

18-231 NEW WEST, ET AL. V. JOLIET, IL, ET AL.

The petition for a writ of certiorari is denied. Justice Kagan took no part in the consideration or decision of this petition.

18-5560 BEAUCHAMP, ERIC C. V. DOGLIETTO, D. J., ET AL.

18-5583 TURNER, STEPHEN B. V. SMITH, MELODY, ET AL.

The petitions for writs of certiorari are denied. Justice Breyer took no part in the consideration or decision of these petitions.

18-5704 AUSTIN, ROBERT V. DIST. ATT'Y OF PHILADELPHIA CTY.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

18-5810 RIVERA, LAUREANO R. V. UNITED STATES

18-5811 ESCOBAR DE JESUS, EUSEBIO V. UNITED STATES

The petitions for writs of certiorari are denied. Justice Kagan took no part in the consideration or decision of these petitions.

18-5930 WALKER, TIMOTHY V. UNITED STATES

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

**HABEAS CORPUS DENIED**

18-5976 IN RE JAAME AMUN RE EL

The petition for a writ of habeas corpus is denied.

18-5952 IN RE SAMUEL H. WILLIAMS

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8.

18-6034 IN RE GREGORY W. BURWELL

The petition for a writ of habeas corpus is denied. Justice Kagan took no part in the consideration or decision of this petition.

**MANDAMUS DENIED**

18-5852 IN RE SONTAY T. SMOTHERMAN

The petition for a writ of mandamus is denied.

18-5454 IN RE DEBORAH E. GOUCH-ONASSIS

18-5455 IN RE DEBORAH E. GOUCH-ONASSIS

18-5551 IN RE RAFAEL A. JOSEPH

The motions of petitioners for leave to proceed *in forma pauperis* are denied, and the petitions for writs of mandamus are dismissed. See Rule 39.8.

18-5575 IN RE ALLAH

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of mandamus is dismissed. See Rule 39.8. As the petitioner has repeatedly

abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

**REHEARING DENIED**

17-8324

WELLS, GLYNN L. V. HARRY, WARDEN

The petition for rehearing is denied.

**III. UOCAVA Enforcement Activity by the  
Attorney General in 2018**

**C. Activity in Other UOCAVA Litigation**

**United States v. New York**

Peter S. Kosinski  
Co-Chair



Douglas A. Kellner  
Co-Chair

Gregory P. Peterson  
Commissioner

40 NORTH PEARL STREET, SUITE 5  
ALBANY, N.Y. 12207-2109

Andrew J. Spano  
Commissioner

Todd D. Valentine  
Co-Executive Director

Phone: 518/474-8100 Fax: 518/486-4068  
<http://www.elections.ny.gov>

Robert A. Brehm  
Co-Executive Director

November 16, 2017

Hon. Gary L. Sharpe  
United States District Court Judge  
Northern District of New York  
James T Foley Courthouse  
445 Broadway – Room 441  
Albany, New York 12207

**RE: *United States v State of New York, et al***  
Civil Action No. 10-CV-1214

Dear Judge Sharpe:

Please find submitted herewith a proposed Supplemental Remedial Order relating to the Political Calendar for the 2018 federal election in New York State as well as a complete version of the calendar such order would effectuate.

The proposed calendar and Order were circulated to all parties, and we are authorized to state there are no objections.

The Board was contacted in early October by Gary Donoyan, Esq. representing the Libertarian Party of New York who indicated that his client was contemplating moving to intervene in this matter, and he was made aware of our imminent application to this Court. Such a motion to intervene has not occurred, but we are sending him a copy of this letter application as a courtesy.

We respectfully ask the court to consider this request at its earliest convenience.

Respectfully yours,

*s/ Kimberly Galvin*

Kimberly Galvin,  
Counsel  
Bar Roll: 505011

*s/ Brian Quail*

Brian L. Quail,  
Counsel  
Bar Roll: 510786

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK  
ALBANY DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

STATE OF NEW YORK and THE NEW )  
YORK STATE BOARD OF ELECTIONS, )

Defendants. )

Case No. 1:10-CV 1214 (GLS/RFT)

**SUPPLEMENTAL REMEDIAL ORDER**

**WHEREAS** the January 27, 2012 Order of this court granted a Permanent Injunction to the United States upon its application to bring the State of New York into compliance with 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 (MOVE) Act, Pub. L. No. 111-84, subtitle H, §§ 575-589, 123 Stat. 2190, 2318-235 (2009). The January 27, 2012 Order set the 2012 federal non-presidential primary date as June 26, 2012 and provided that in subsequent even-numbered years, New York's non-presidential federal primary date shall

be the fourth Tuesday of June, unless and until New York enacts legislation resetting the non-presidential federal primary for a date that complies fully with all UOCA V A requirements, and is approved by the court (Decretal Paragraphs "1" and "2");

**WHEREAS** by Order dated February 9, 2012, this court adopted a political calendar for the implementation of the 2012 federal non-presidential primary and general election, and such calendar was specific to 2012. (ECF Document No. 64, pp. 2-3, 5-6);

**WHEREAS** by Order dated December 12, 2013, this court adopted a political calendar for the implementation of the 2014 federal non-presidential primary and general election, and such calendar was specific to 2014. (ECF Document No. 85, pp 2-6);

**WHEREAS** by Order dated October 29, 2015, this court adopted a political calendar for the implementation of the 2016 federal non-presidential primary and general election, and such calendar was specific to 2016. (ECF Document No. 88, pp 3-5);

**WHEREAS** as of this date the State of New York has not amended the New York State Election Law to change the date of the federal primary with respect to this court's Order of January 27, 2012 and until such action has occurred this application is necessary;

**WHEREAS** the instant application requests that the court supersede various sections of the Election Law as necessary to effectuate the January 27, 2012 Order of this court;

**WHEREAS** the parties to this action consent to the issuance of this Supplemental Remedial Order;

**WHEREAS** it is the judgment of this court that the enumerated sections of New York State law must be superseded to provide for a MOVE Act compliant election in New York for the year 2018, now therefore, it is hereby,

**ORDERED** that the following sections of New York State law be and hereby are superseded for the 2018 election of federal offices in New York:

**Schedule of State Law Provisions Superseded for Compliance with MOVE Act**

<b>Section of Election Law</b>	<b>Subject</b>	<b>Description of Change</b>
§ 1-106	Timeliness of filings related to federal offices	For the 2018 Federal Primary and General Elections, that all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the state board of elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service (as defined in Election Law 1-106(3) in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than one business day after the last day to file such certificates, petitions, objections or specifications.

Section of Election Law	Subject	Description of Change
§ 4-110	Date of certification of Primary Election ballot by New York State Board of Elections for candidates for federal office	from thirty-six to fifty-four days pre-Primary [May 3, 2018]
§ 4-114	Date of certification of ballot by county boards of elections for candidates for federal office	from thirty-five to fifty-three days pre-Primary or pre General Election [Primary: May 4, 2018; General: September 14, 2018]
§ 4-112 [1]	Date of certification of General Election ballot by New York State Board of Elections for candidates for federal office	from thirty-six to fifty-four days pre-General Election [September 13, 2018]
§ 6-104 [6]	Dates for holding state committee meeting to nominate candidates for statewide federal office	measured from federal primary [February 13, 2018 thru March 6, 2018]
§ 6-158 [1]	Filing of designating petitions for Federal Primary	from the time period “between the tenth Monday to the ninth Thursday” to the time period “between the twelfth Monday to the eleventh Thursday” preceding the Federal Primary [April 9, 2018 April 12, 2018]
§ 6-158 [4]	Filing of opportunity to ballot petitions for Federal Primary	from the eighth Thursday to the tenth Thursday preceding Federal Primary [April 19, 2018]
§ 6-158 [4]	Filing of opportunity to ballot petitions upon declination for Federal Primary	from the seventh to the ninth Thursday preceding Federal Primary [April 26, 2018]
§ 6-158 [6]	Last day to file certificate of nomination to fill vacancy in federal office pursuant to § 6-116	from seven to twenty-one days after Federal Primary [July 17, 2018]
§ 6-158 [9]	Filing dates for independent nominations for federal offices	from the time period “twelve weeks preceding through eleven weeks preceding” to the time period “fifteen weeks preceding through fourteen weeks preceding” the General Election [July 24, 2018 to July 31, 2018]

Section of Election Law	Subject	Description of Change
§ 6-158 [11]	Last day to accept or decline independent nomination for federal office	from three days after the eleventh Tuesday to three days after the fourteenth Tuesday preceding the General Election, and from three days after the Primary to three days after the fourteenth Tuesday preceding the General Election <b>[August 3, 2018]</b>
§ 6-158 [12]	Last day to fill vacancy after declination of a federal independent nomination	from the eleventh to the fourteenth Tuesday preceding the General Election <b>[August 6, 2018]</b>
§ 10-108 [1] and § 11-204 [4]	Deadline to transmit Military and Special Federal absentee ballots for Federal Primary or General Election to voters with valid applications on file	from thirty-two days to forty-five days before Federal Primary or General Election for federal offices. <b>[May 12, 2018 for Federal Primary]</b> <b>[September 22, 2018 for General Election]</b>

**ORDERED** that nothing herein shall prohibit the State of New York from making statutory changes in its federal office election process to put New York in compliance with the MOVE Act, and that such changes, if made, may be implemented in 2018 upon the determination of this court that such changes render the 2018 election for federal offices MOVE Act compliant.

Date: November 21, 2017  
Albany, New York

Gary L. Sharpe  
**GARY L. SHARPE**  
United States District Court Judge

**TABLE OF POLITICAL CALENDAR EVENTS ADJUSTED TO COMPLY WITH COURT ORDER IMPLEMENTING THE MOVE ACT**

The Federal MOVE Act requires military and special federal ballots to be sent out 45 days prior to an election for federal office. Here's a summary of the key calendar changes that ensure compliance.

The following table shows the 2018 events that occur in the political calendar grouped by topic. The left-hand column indicates the sections of law that would need to be superseded in order to comply with the Court Order to send out the military ballots by the 45<sup>th</sup> day before both the federal primary and the general election.

The table also applies the statutory rule of moving filing dates if the last day for filing shall fall on a Saturday, Sunday or legal holiday, the next business day shall become the last day for filing. Election Law §1-106

**Designating Petitions for Federal Office/Federal Primary Election:**

- e First date to circulate designating petitions for federal office is March 6, 2018.e
- e Dates to file designating petitions are April 9, 2018 to April 12, 2018.e
  - o Nominating petitions by independent bodies for federal office as those petition dates are altered by this plan.e
    - e First date to circulate independent nominating petitions for federal office is June 19, 2018.e
    - e Dates to file independent nominating petitions for federal office are July 24, 2018 to July 31, 2018.e
  - o Nominating petitions by independent bodies for state/local office are NOT altered by this plan.e

**Opportunity to Ballot Petitions for Federal Office/Federal Primary Election:**

- e First date to circulate OTB petitions for federal office is changed to March 27, 2018.e
- e Last date to file OTB petitions is changed to April 19, 2018.e

To provide for the reduction in time to process designations and allow an administrative process for objections, and judicial review, NYS Election Law Section 1-106 should be superseded to require as part of this plan the following:

For the 2018 Federal Primary and General Elections, that all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the state board of elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service (as defined in NYS Election Law Section 1-106(3)(a)) in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than one business day after the last day to file such certificates, petitions, objections or specifications.

General Election: November 6, 2018  
 State Primary: September 11, 2018  
 Federal Primary: June 26, 2018

**Designating Petitions for State Primary**

First day to sign .....e..... June 5, 2018  
 Filing Dates .....e..... July 9-July 12  
 Last day to authorize ..... July 16  
 Last day to accept/decline.....e..... July 16  
 Last day to fill vacancy .....e..... July 20  
 Last day to authorize substitution ..... July 24

**Opportunity to Ballot Petitions**

First day to sign .....e..... June 26, 2018  
 Last day to file OTB ..... July 19  
 Last day to file OTB if designated candidate declines ..... July 26

Statewide Party Nominations .....e..... May 15-June 5, 2018

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments
<b>Certification of Federal Primary Election</b>			
CO-1	Certification of Federal Primary ballot by SBOE of designations filed in its office 54 days before federal primary.	§ 4-110	5/3/2018  Statute needs to be superseded.  § 4-110. Certification of primary election candidates; state board of elections The state board of elections not later than <u>fifty-four days before a primary election for federal office; or thirty-six days before a primary election for state/local office</u> , shall certify to each county board of elections: The name and residence of each candidate to be voted for within the political subdivision of such board for whom a designation has been filed with the state board; the title of the office or position for which the candidate is designated; the name of the party upon whose primary ballot his name is to be placed; and the order in which the names of the candidates are to be printed as determined by the state board. Where an office or position is uncontested, such certification shall state such fact.
CO-2	Determination of candidates for federal office; CBOEs of designations filed in its office – 53 days before federal primary.	§ 4-114	5/4/2018  Statute needs to be superseded.  § 4-114. Determination of candidates and questions; county board of elections The county board of elections, not later than <u>fifty-three days before a primary or general election for federal office; or the thirty-fifth day before the day of a primary or general election for state/local offices</u> , or the fifty-third day before a special election, shall determine the candidates duly nominated for public office and the questions that shall appear on the ballot within the jurisdiction of that board of elections.
<b>Federal Primary Election</b>			
	Federal Primary	Court Order	6/26/2018  Set by Federal Court Order
	Canvass of Federal Primary Returns by County Board of Elections	§9-200(1)	7/5/2018
	Recanvass of Federal Primary Returns	§9-208(1)	7/11/2018
	Post-Election Audit of Voting Systems	§9-211(1)	7/3/2018

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments
<b>Certification of General Election</b>			
Certification of offices to be filled at General Election	§4-106 (1) (2)	3/6/2018	Same as the first date to circulate designating petitions for federal primary.
Deadline for vacancies to occur and be filled at the General Election for state/local candidates where the contest was not already on the ballot.	§6-158 (14) Pub Off §42 (1)	9/19/18	Except State Supreme Court Justices, deadline is 3 months before the date of the General Election. (August 6, 2018)
CO-3 Certification of General Election ballot by SBOE of federal candidates filed in its office to be completed 54 days before General Election.	§ 4-112 (1)	9/13/2018	Statute needs to be superseded.  § 4–112. Certification of nominations; state board of elections 1. The state board of elections not later than <u>fifty-four days before a general election for federal offices; or, thirty-six days before a general election for state/local offices</u> , or fifty-three days before a special election, shall certify to each county board of elections the name and residence of each candidate nominated in any valid certificate filed with it or by the returns canvassed by it, the title of the office for which nominated; the name of the party or body specified of which he is a candidate; the emblem chosen to distinguish the candidates of the party or body; and a notation as to whether or not any litigation is pending concerning the candidacy. Upon the completion of any such litigation, the state board of elections shall forthwith notify the appropriate county boards of elections of the results of such litigation.
CO-4 Determination of federal candidates; CBOEs filed locally – 53 days before General Election	§ 4-114	9/14/2018	Statute needs to be superseded.  § 4–114. Determination of candidates and questions; county board of elections The county board of elections, not later than <u>fifty-three days before a primary or general election for federal office; or</u> the thirty-fifth day before the day of a primary or general election <u>for state/local offices</u> , or the fifty-third day before a special election, shall determine the candidates duly nominated for public office and the questions that shall appear on the ballot within the jurisdiction of that board of elections.

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)		SECTION OF LAW	Date	Comments
	Certification of General Election ballot by SBOE of state candidates filed in its office to be completed 36 days before General Election.	§ 4-112 (1)	10/1/2018	
	Determination of state/local candidates and questions; CBOEs filed locally – 35 days before General Election	§ 4-114	10/2/2018	
<b>General Election</b>				
	General Election	§ 8-100 (1)(c)	11/6/2018	
<b>Party Designations</b>				
<b>Designating Petitions for the Federal Primary</b>				
	First day for signing designating petitions for federal office.	§ 6-134 (4)	3/6/2018	
CO-5	Dates for filing designating petitions for Federal Primary.	§ 6-158 (1)	4/9/18 to 4/12/18	Footnote: Change the time to receive documents sent by overnight mail to not later than one business day after the last date to file for filings made at State Board or County Boards outside of the City of NY. (§1-106) Change to 12 <sup>th</sup> Monday and 11 <sup>th</sup> Thursday before primary. Notwithstanding the provisions of Section 6-158(1), in 2018, a designating petition for federal office shall be filed not earlier than the <u>twelfth</u> Monday before, and not later than the <u>eleventh</u> Thursday preceding the federal primary election.
	Last day to authorize federal designations.	§ 6-120 (3) § 6-158 (6)	4/16/2018	Remaining issues in this section are based on the dates as changed to file designating petitions for federal office.
	Last day to accept/decline a federal designation.	§ 6-158 (2)	4/16/2018	
	Last day to fill vacancy after declination of federal designation.	§ 6-158 (3)	4/20/2018	
	Last day to file authorization of substitution after a declination of federal designation.	§ 6-120 (3)	4/24/2018	

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments	
<b>Opportunity to Ballot (OTB) Petitions for the Federal Primary</b>				
	First day for signing OTB for federal office.	§ 6-164	3/27/2018	
CO-6	Last day to file OTB petitions for federal office.	§ 6-158 (4)	4/19/2018	Footnote: Except in 2018 for Federal primary election, petition of enrolled members of a party requesting an opportunity to write in the name of an undesignated candidate for a federal public office at a federal primary election shall be filed not later than the <u>10<sup>th</sup></u> Thursday preceding the federal primary election.
CO-7	Last day to file an OTB petition if there has been a declination by a designated candidate.	§ 6-158 (4)	4/26/2018	Footnote: Except in 2018 for Federal primary election, if a designating petition has been filed and the person named has declined such designation, and another person has been designated to fill the vacancy, then in that event, a petition for an opportunity to ballot in a primary election for Federal office shall be filed not later than the <u>9<sup>th</sup></u> Thursday preceding such federal primary election.
<b>Party Nominations Other than Primary for Federal Office</b>				
	Dates for holding state committee meeting to nominate candidates for federal statewide office	§6-104 (6)	Feb 13 thru Mar 6, 2018	Change in 2018. Dates are based on the state/local political calendar dates as provided in statute as there is a federal statewide office in 2018
CO-8	Last day to file certificates of nomination to fill vacancies in federal office created pursuant to § 6-116.	§ 6-158 (6)	7/17/2018	<p><u>21</u> days after Federal primary election.</p> <p>We should supersede Section 6-158(6) to provide more time post primary to convene a state committee meeting, in the event a vacancy occurs after 7 days before the last date to circulate designating petitions for federal office, or 60 days before the primary pursuant to Pub Officers Law Sec 42-4-a.</p> <p>With the July 4<sup>th</sup> holiday and the availability of time post-primary, it would be helpful to increase the statutorily provided 7 days after the federal primary time period to at least 21 days after the primary.</p>
	Last day to accept or decline a nomination for federal office made based on § 6-116.	§ 6-158 (7)	7/20/2018	3 days after the last date to file certificate of nomination.

Summary of Current Statutory Text (CO# = Changes in law to comply with Court Order)		SECTION OF LAW	Date	Comments
	Last day to file authorization of nomination for federal office made based on § 6-116.	§ 6-120 (3)e	7/23/2018	4 days after the last day to file certificate of nomination. Date falls on Saturday, July 21 <sup>st</sup> – moves to Monday, July 23, 2018.
	Last day to fill a vacancy after a declination for federal office made based on § 6-116.	§ 6-158 (8)	7/24/2018	4 days after the last day to file declination.
<b>Party Nominations Other than Primary for State Office</b>				
	Dates for holding state committee meeting to nominate candidates for statewide office	§6-104 (6)e	5/15/2018 thru 6/5/2018	Not earlier than 21 days before the first day to sign designating petitions, not later than the first day to sign designating petitions for the primary election.
<b>Independent Petitions for Federal Office</b>				
	First day for signing nominating petitions for federal office.	§ 6-138 (4)e	6/19/2018	Notwithstanding NYS Election Law provisions, we will need to move the independent nominating ballot access time period in 2018 for federal office to begin and end four weeks earlier than currently provided for in statute. Otherwise, there will be less than 8 days to research objection/specs, conduct hearings, hold a board vote to make determinations, provide an opportunity for litigation and conduct the state/local primary before the September 13 <sup>th</sup> deadline to certify the federal candidates for the general election ballot.
CO-9	Dates for filing independent nominating petitions for federal office.	§ 6-158 (9)e	7/24/2018 to 7/31/2018	Statute needs to be superseded.  9. A petition for an independent nomination for an office to be filled at the time of a general election shall be filed not earlier than <u>fifteen</u> weeks and not later than <u>fourteen</u> weeks preceding such election. Based upon previous experience, additional time is necessary to process filings, objections and specifications, and respond to any litigation, prior to the certification of the ballot and the timely production of ballots.

Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)		SECTION OF LAW	Date	Comments
CO-10	Last day to accept or decline independent petition nomination for federal office.	§ 6-158 (11)	8/3/2018	<p>Statute should be superseded.</p> <p>Federal primary occurs prior to independent petition filing period for federal office, so the second part of this should be null. Not sure the best way to point that out to address the deadline issue that would be left hanging if not addressed.</p> <p>11. A certificate of acceptance or declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the third day after the fourteenth Tuesday preceding such election except that a candidate who files such a certificate of acceptance for an office for which there have been filed certificates or petitions designating more than one candidate for the nomination of any party, may thereafter file a certificate of declination not later than the <u>third day after the fourteenth Tuesday preceding such primary election.</u></p>
CO-11	Last day to fill a vacancy after a declination to an independent petition nomination for federal office.	§ 6-158 (12)	8/6/2018	<p>Statute should be superseded.</p> <p>12. A certificate to fill a vacancy caused by a declination of an independent nomination for an office to be filled at the time of a general election shall be filed not later than the sixth day after the <u>fourteenth Tuesday preceding such election.</u></p>
CO-12	Last day to decline after acceptance if nominee loses party primary.	§ 6-158 (11)	8/3/2018	<p>Statute issue. The federal primary takes place before independent petitions for federal office are filed. Therefore, this issue would not take place and the regular declination deadline for an independent petition nomination for federal office should be referenced.</p>
<b>Independent Petitions For State/Local Office</b>				
	First day for signing nominating petitions for state/local office.	§ 6-138 (4)	7/10/2018	
	Dates for filing independent nominating petitions for state/local office.	§ 6-158 (9)	8/14/2018 - 8/21/2018	
	Last day to accept or decline independent petition nomination for state/local office.	§ 6-158 (11)	8/24/2018	
	Last day to fill a vacancy after a declination of independent petition nomination for state/local office.	§ 6-158 (12)	8/27/2018	

Summary of Current Statutory Text (CO#- Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments
Last day to decline after acceptance of independent petition nomination if nominee loses party primary.	§ 6-158 (11)	9/14/2018	
<b>Voter Registration</b>			
<b>Federal Primary Election</b>			
Mail registration: Last day to postmark application and last day it must be received by board of elections.	§ 5-210 (3)	6/1/2018 thru 6/6/2018	
In person registration: Last day application must be received by board of elections to be eligible to vote in primary election.	§§ 5-210, 5-211, 5-212	6/1/2018	
Change of Address: Changes of address received 20 days before an election must be completed before such election.	§ 5-208 (3)	6/6/2018	
<b>Voting by Absentee Ballot</b>			
<b>For Federal Primary</b>			
Last day to postmark application for ballot.	§8-400(2)(c)	6/19/2018	
Last day to apply in person for a ballot.	§8-400(2)(c)	6/25/2018	
Last day to postmark ballot and date it must be received by the board of elections.	§8-412(1)	6/25/2018 - 7/3/2018	
Last day to deliver ballot in person to the county board, by 9 PM.	§8-412(1)	6/26/2018	
<b>Military/Special Federal (UOCAVA) Voters for Federal Primary</b>			
Last day for a BOE to receive application for Military or Special Federal ballot if not previously registered.	§ 10-106(5) §11-202	6/1/2018	
Last day for a BOE to receive Military or Special Federal absentee application if previously registered.	§ 10-106(5) §11-204(4)	6/19/2018	
Last day to apply personally for Military absentee if previously registered.	§ 10-106(5)	6/25/2018	

	Summary of Current Statutory Text (CO#= Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments
CO-13	Deadline to transmit Military/Special Federal absentee ballots for Federal Primary to voters with valid applications on file.	§ 10-108(1) §11-204(4)	5/12 is Saturday (45 days)	<p>Ballots for UOCAVA voters shall be mailed or otherwise transmitted not later than <del>32</del> <u>45</u> days before a primary or general election for federal office.</p> <p>These sections need to be superseded.</p> <p>§ 10-108. Military voters; distribution of ballots to 1. (a) Ballots for military voters shall be mailed or otherwise distributed by the board of elections, in accordance with the preferred method of transmission designated by the voter pursuant to section 10-107 of this article, as soon as practicable but in any event not later than <u>forty-five days before a primary or general election for federal offices or</u>; thirty-two days before a primary or general election <u>for state/local offices</u>;</p> <p>§ 11-204. Processing of applications by board of elections 4. If the board of elections shall determine that the applicant making the application provided for in this section is qualified to receive and vote a special federal ballot, it shall, as soon as practicable after it shall have so determined, or not later than <u>forty-five days before a primary or general election for federal offices or</u>; thirty-two days before each general or primary election <u>for state/local offices</u>;</p>
	Last day to post mark Military/Special Federal ballot and date it must be received by the board of elections.	§ 10-114(1) § 11-212	6/25/2018 7/3/2018	
<b>Military/Special Federal (UOCAVA) Voters for General Election</b>				
	Last day for a BOE to receive application for a Military absentee ballot if not previously registered.	§ 10-106 (5)	10/27/2018	
	Last day for a BOE to receive a Military absentee application, if by mail and previously registered.	§ 10-106 (5)	10/30/2018	
	Last day for a BOE to receive application for Special Federal absentee ballot if not previously registered.	§ 11-202 (1)	10/12/2018	

	Summary of Current Statutory Text (CO# = Changes in law to comply with Court Order)	SECTION OF LAW	Date	Comments
	Last day for a BOE to receive a Special Federal absentee application if previously registered.	§ 11-204 (4)	10/30/2018	
	Last day to apply personally for a Military absentee ballot if previously registered.	§ 10-106 (5)	11/5/2018	
CO-14	Deadline to transmit Military/Special Federal general election absentee ballots for federal offices to be filled at the General Election to voters with valid applications on file.	§ 10-108(1) § 11-204(4)	9/22/2018 (45 days)	<p>Footnote: Transmit ballot for federal office 9/24/2018 (45 days falls on SAT). However, a second ballot with only state/local offices/propositions would need to be transmitted ONLY to Military voters thereafter who previously received only federal ballot. Later, Military applicants would continue to receive two ballots: one with federal contests, and one with state/local contests and proposals.</p> <p>§ 10–108. Military voters; distribution of ballots to</p> <p>1. (a) Ballots for military voters shall be mailed or otherwise distributed by the board of elections, in accordance with the preferred method of transmission designated by the voter pursuant to section 10–107 of this article, as soon as practicable but in any event not later than <u>forty-five days before a primary or general election for federal offices or</u>; thirty-two days before a primary or general election <u>for state/local offices</u>;</p> <p>§ 11–204. Processing of applications by board of elections</p> <p>4. If the board of elections shall determine that the applicant making the application provided for in this section is qualified to receive and vote a special federal ballot, it shall, as soon as practicable after it shall have so determined, or not later than <u>forty-five days before a primary or general election for federal offices or</u>; thirty-two days before each general or primary election <u>for state/local offices</u>;</p>
	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections.	§10-114(1) §11-212	11/5/2018 11/19/2018	

**D\*R\*A\*F\*T**

**2018  
POLITICAL CALENDAR**

**September 28, 2017**



**Federal Primary Election  
June 26**

**State/Local Primary Election  
September 11**

**General Election  
November 6**

This political calendar is a ready reference to the significant dates pertaining to elections to be held in this state. For complete information be sure to consult the State's Election Law and Regulations and any relevant court orders.

All dates are based on court-ordered and statutory provisions in effect on the date of publication and may be subject to change. Final confirmation should be obtained from your county board of elections or the State Board.

NEW YORK STATE  
BOARD OF ELECTIONS  
40 NORTH PEARL STREET - SUITE 5,  
ALBANY, NEW YORK 12207  
(518) 474-6220

For TDD/TTY, call the NY State Relay 711

[www.elections.ny.gov](http://www.elections.ny.gov)

**PRIMARY ELECTION HOURS:**

In New York City and the counties of Nassau, Suffolk, Westchester, Rockland, Orange, Putnam, Erie and Dutchess. **POLLS OPEN at 6 AM and CLOSE at 9 PM.** In all other counties **POLLS OPEN at 12 NOON and CLOSE at 9 PM.**

**GENERAL ELECTION HOURS:**

All Polls **OPEN at 6 AM and CLOSE at 9 PM**

**FILING REQUIREMENTS  
FEDERAL COURT ORDER**

For the **2018 Federal Primary Election and General Elections**, all certificates and petitions of designation or nomination, certificates of acceptance or declination of such designations and nominations, certificates of authorization for such designations, certificates of disqualification, certificates of substitution for such designations or nominations and objections and specifications of objections to such certificates and petitions required to be filed with the State Board of Elections or a board of elections outside of the city of New York shall be deemed timely filed and accepted for filing if sent by mail or overnight delivery service (as defined in New York State Election Law §1706(3)(a)) in an envelope postmarked or showing receipt by the overnight delivery service prior to midnight of the last day of filing, and received no later than one business day after the last day to file such certificates, petitions, objections or specifications.

**SIGNATURE REQUIREMENT FOR FEDERAL DESIGNATING AND OPPORTUNITY TO DELIVER PETITIONS**

5% of the enrolled voters of the political party in the political unit (excluding voters in inactive status) or the following, whichever is less; for any office to be filled by all the voter of:  
the entire state ..... 15,000  
(with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)

any congressional district ..... 1,250

**SIGNATURE REQUIREMENTS FOR FEDERAL INDEPENDENT NOMINATING PETITIONS**

5% of the total number of votes, excluding blank and void, cast for the office of governor at the last gubernatorial election in the political unit, except that not more than 3,500 signatures shall be required on a petition for any office to be filled in any political subdivision outside the City of New York, and not more than the following for any office to be voted for by all the voters of:  
the entire state ..... 15,000  
(with at least 100 from each of one-half of the congressional districts)

any congressional district ..... 3,500

**FEDERAL ELECTION - ELECTION DATES**

March 6	Certification of offices to be filled at General Election. §4-105(1)(2)
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June 26 <sup>th</sup>	Federal Primary Election. Court Ordered
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**CERTIFICATION OF FEDERAL PRIMARY**

May 3	Certification of Federal primary ballot by State Board of Elections of designations filed in its office. §4-110
May 4	Determination of candidates for Federal office by county boards. §4-114

**CANVASSING FEDERAL PRIMARY ELECTION RESULTS**

July 5	Canvass of Federal Primary returns by counties. §7-206(1)
July 11	Recanvass of Federal Primary returns. §7-208(1)
July 3	Verifiable Audit of Voting Systems §9-211(1)

Sept. 19	Deadline for vacancies to be filled at General Election. §5-152(1)(1)
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November 6 <sup>th</sup>	General Election §6-105(1)(c)
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**CERTIFICATION OF FEDERAL GENERAL BALLOT**

Sept. 13	Certification of general election ballot by State Board of Federal designations filed in its office. §4-117(1)
Sept. 14	Determination of Federal candidates and questions by county boards. §4-114

**\*\*\* BECOMING A CANDIDATE \*\*\***

**DESIGNATING PETITIONS FOR FEDERAL PRIMARY**

March 6	First day for signing Federal designating petitions. §6-13(2)(2)
April 9 - April 12	Dates for filing Federal designating petitions. §6-15(1)
April 16	Last day to authorize Federal designations §6-12(1)(3) & §6-15(1)(4)
April 16	Last day to accept or decline Federal designations. §6-15(2)
April 20	Last day to fill a vacancy after a Federal declination §6-15(3)
April 24	Last day to file authorization of substitution after declination of a Federal designation. §6-17(1)

**OPPORTUNITY TO DELIVER PETITIONS FOR FEDERAL PRIMARY**

March 27	First day for signing Federal OTB petitions. §6-364
April 19	Last day to file Federal OTB petitions. §6-15(1)(4)
April 26	Last day to file OTB petition if there has been a declination by a designated candidate. §6-15(1)(4)

**FAMILY EQUIVALENCY OTHER THAN PRIMARY**

Feb. 13 - March 6	Dates for holding state committee meeting to nominate candidates for Federal statewide office. §6-10-3(6)
July 17	Last day to file certificates of nomination to fill vacancies in Federal office created pursuant to §§ 6-116 & 6-158(G)
July 20	Last day to accept or decline a nomination for Federal office made based on § 6-116
July 23	Last day to file authorization of nomination for Federal office made based on § 6-116
July 23	Last day to fill a vacancy after a declination for Federal office made based on § 6-116
July 24	Last day to fill vacancy after declination § 6-158(B)

**INDEPENDENT PETITIONS FOR FEDERAL OFFICE**

June 19	First day for signing Federal nominating petitions. §6-13(1)(1)
July 24 - July 31	Dates for filing Federal independent nominating petitions. §6-15(1)(9)
August 3	Last day to accept or decline Federal independent nomination. §6-15(1)(1)
August 6	Last day to fill a vacancy after a declination to any independent petition for Federal office. §6-15(1)(2)
August 3	Last day to decline after acceptance if nominee loses party primary. §6-15(1)(1)

**FEDERAL ELECTION - VOTER REGISTRATIONS**

**VOTER REGISTRATION FOR FEDERAL PRIMARY**

June 1	Mail Registration for Federal Primary: Last day to postmark application and last day it must be received by board of elections is June 6. §5-210(3)
June 1	In person registration for Federal Primary: Last day application must be received by board of election to be eligible to vote in primary election. §5-210, §-211 & §-212
June 6	Changes of address for Federal Primary received by this date must be processed. §5-202(3)

**FEDERAL ELECTION - VOTER REGISTRATION**

**VOTER REGISTRATION FOR GENERAL**

Oct. 12	Mail Registration: Last day to postmark application for general election and last day it must be received by board of elections is Oct 17. §5-210(3)
Oct 17	In person registration: Last day application must be received by board of election to be eligible to vote in general election. If you have been honorably discharged from the military or have become a naturalized citizen since October 14 <sup>th</sup> , you may register in person at the board of elections up until October 29 <sup>th</sup> . §5-210, §-211, §-212
Oct. 17	Changes of address received by this date must be processed. §5-202(3)
Oct. 12	Change of party enrollment: Last day to accept a change of enrollment. §5-206(3)

**\*\*\* VOTING BY ABSENTEE \*\*\***

**ABSENTEE VOTING FOR FEDERAL PRIMARY**

June 19	Last day to postmark application for Federal primary ballot. §5-102(1)(c)
June 25	Last day to apply in person for Federal primary ballot. §3-2(2)(c)
June 25	Last day to postmark Federal primary ballot. Must be received by the county board no later than July 3 <sup>rd</sup> . §6-412(1)
July 3	Last day to deliver Federal primary ballot in person to county board, by close of polls on election day. §6-412(1)

**MILITARY/SPECIAL FEDERAL VOTERS FOR FEDERAL PRIMARY**

May 12	Date to transmit Military/Special Federal ballots for Federal primary. (5/12 Saturday) §10-102(1) & §11-204(4)
June 1	Last day for a board of elections to receive application for Military/Special Federal ballot if not previously registered. §10-102(1) & §11-202
June 19	Last day for a board of elections to receive Military/Special Federal application if previously registered. §10-102(1) & §11-204(4)
June 25	Last day to apply personally for Military ballot if previously registered. §10-102(5)
June 25	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections is July 3. §10-104(1) & §11-212

**ABSENTEE VOTING FOR FEDERAL GENERAL**

Oct 30	Last day to postmark application on letter of application for general election ballot. §8-602(1)(c)
Nov. 5	Last day to apply in person for general election ballot. §8-602(1)(d)
Nov. 5	Last day to postmark ballot. Must be received by the county board no later than Nov. 19 <sup>th</sup> . §8-412(1)
Nov. 6	Last day to deliver ballot in person to county board, by close of polls on election day. §8-412(1)

**MILITARY/SPECIAL FEDERAL VOTERS FOR FEDERAL GENERAL**

Sept. 22	Date to transmit Military/Special Federal general election ballots. §10-102(1) & §11-204(4)
Oct. 12	Last day for a board of elections to receive application for Special Federal absentee ballot if not previously registered. §11-202(1)
Oct. 27	Last day for a board of elections to receive application for Military absentee ballot if not previously registered. §10-102(5)
Oct 30	Last day for a board of elections to receive Military absentee application, if by mail and previously registered. §10-102(5)
Oct.30	Last day for a board of elections to receive Special Federal absentee application if previously registered. §11-204(4)
Nov. 5	Last day to apply personally for Military ballot if previously registered. §10-102(5)
Nov. 5	Last day to postmark Military/Special Federal ballot and date it must be received by the board of elections is Nov. 19 <sup>th</sup> . §10-104(1) & §11-212

**STATE/LOCAL ELECTIONS: ELECTION DATES**

Sept. 11	State/Local Primary Election §§1-100(1)(a)
May 22	PARTY CALLS: Last day for State & County party chairs, to file a statement of party positions to be filled at the State Primary Election. §2-120(1)

**CERTIFICATION OF STATE/LOCAL PRIMARY**

Aug. 6	Certification of September state/local primary ballot by SBOE of designations filed in its office. §4-110
Aug. 7	Determination of candidates and questions; County Boards. §4-114

**CANVASS OF STATE/LOCAL PRIMARY RESULTS**

Sept. 20	Canvass of State/Local Primary Returns by County Board of Elections. §3-200(1)
Sept. 26	Recanvass of State/Local Primary returns. §9-208(1)
Sept. 18	Verifiable Audit of Voting Systems. §9-211(1);

Nov. 6	General Election §8-100(1)(c)
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**CERTIFICATION OF STATE/LOCAL GENERAL ELECTION BALLOT**

Oct. 1	Certification of state election ballot by SBOE of nominations filed in its office. §4-112(1);
Oct. 2	Determination of state/local candidates and questions by county boards. §4-114;

**CANVASS OF STATE/LOCAL GENERAL ELECTION RESULTS**

Dec. 3	Canvass of General Election results by County Board of Elections. §9-214(1)
Nov. 21	Recanvass of General results. §9-208(1)
Nov. 21	Verifiable Audit of Voting Systems. §9-211(1);
Dec. 14	State Board of Canvassers meet to certify General Election (12/15 Saturday)

**\*\* BECOMING A CANDIDATE \*\***

**DESIGNATING PETITIONS FOR STATE/LOCAL PRIMARY**

June 5	First day for signing designating petitions for state/local offices. §6-134(1)
July 9- July 12	Dates for filing designating petitions for state/local offices. §6-158(1)
July 16	Last day to authorize designations for state/local offices. §6-120(3)
July 16	Last day to accept or decline designations for state/local offices. §6-158(2)
July 20	Last day to fill a vacancy after a declination for state/local office. §6-158(3)
July 24	Last day to file authorization of substitution after declination of a state/local designation. §6-120(3)

**OPPORTUNITY TO BALLOT PETITIONS FOR STATE/LOCAL PRIMARY**

June 26	First day for signing OTB petitions for state/local offices. §6-164
July 19	Last day to file OTB petitions for state/local offices §6-158(4)
July 26	Last day to file OTB petition if there has been a declination by a designated candidate for state/local offices. §6-158(4)

**PARTY NOMINATION OTHER THAN PRIMARY**

May/15 through June 5	Dates for holding state committee meeting to nominate candidates for statewide office
June 5	First day to hold a town caucus. 16-100 **
Sept. 18	Last day for filing nominations made at a town or village caucus or by a party committee. §6-158(6)
Sept. 18	Last day to file certificates of nomination to fill vacancies created pursuant to §§ 6-116 & 6158(6)
Sept. 21	Last day to accept or decline a nomination for State/local office made based on § 6-116
Sept. 24	Last day to file authorization of nomination made based on § 6-116
Sept. 25	Last day to fill a vacancy after a declination made based on § 6-116

**INDEPENDENT PETITIONS FOR STATE/LOCAL OFFICES**

July 10	First day for signing nominating petitions for state/local offices. §6-138(1)
Aug. 14 - Aug. 21	Dates for filing independent nominating petitions for state/local office. §6-158(9)
Aug. 24	Last day to accept or decline nomination for state/local office. §6-158(11)
Aug. 27	Last day to fill a vacancy after a declination in state/local office. §6-158(12)
Sept. 14	Last day to decline after acceptance if nominee loses party primary. §6-158(11)

**STATE/LOCAL ELECTION JUDICIAL DISTRICT CONVENTIONS**

Sept. 18 thru 26	Dates for holding Judicial conventions. §6-158(5)
Sept. 25	Last day to file certificates of nominations. §6-158(6)
Sept. 28	Last day to decline. §6-158(7)
Oct. 12	Last day to fill vacancy after a declination. §6-158(8)
Minutes of a convention must be filed within 72 hours of adjournment. §6-158(8)	

**SIGNATURE REQUIREMENT FOR DESIGNATING AND OPPORTUNITY TO BALLOT PETITIONS FOR STATE/LOCAL OFFICES**

5% of the enrolled voters of the political party in the political unit (excluding voters in inactive status) or the following, whichever is less:  
For any office to be filled by all the voters of:

the entire state . . . . . 15,000 (with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)

New York City . . . . . 7,500  
any county or borough of New York City . . . . . 4,000  
a municipal court district within NY City . . . . . 1,500  
any city council district within New York City . . . . . 3,000  
cities or counties having more than 250,000 inhabitants . . . . . 2,000  
cities or counties having more than 25,000 but not more than 250,000 . . . . . 1,000  
any city, county, councilmanicorp county legislative districts in any city other than NY City . . . . . 500  
any congressional district . . . . . 1,250  
any state senatorial district . . . . . 1,000  
any assembly district . . . . . 500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision; a political subdivision containing more than one assembly district, county or other political subdivision, requirement is not to exceed the aggregate of the signatures required for the subdivision or parts of subdivision so contained.

**\*NOTE: Section 1057-b of the New York City Charter Supersedes New York Election Law signature requirements for Designating and OTB petitions and independent nominating petitions with respect to certain NY City offices.**

**SIGNATURE REQUIREMENT FOR INDEPENDENT NOMINATING PETITIONS FOR STATE/LOCAL OFFICES**

5% of the total number of votes, excluding blank and void, cast for the office of governor at the last gubernatorial election in the political unit, except that not more than 3,500 signatures shall be required on a petition for any office to be filled in any political subdivision outside the City of New York, and not more than the following for any office to be voted for by all the voters of:

the entire state . . . . . 15,000 (with at least 100 or 5% of enrolled voters from each of one-half of the congressional districts)

any county or portion thereof outside the city of NY . . . . . 1,500

the City of New York . . . . . 7,500  
any county or borough or any two counties or boroughs within the city of NY City . . . . . 4,000  
a municipal court district . . . . . 3,000  
any city council district within NY City . . . . . 2,700  
any congressional district . . . . . 3,500  
any state senatorial district . . . . . 3,000  
any assembly district . . . . . 1,500

any political subdivision contained within another political subdivision, except as herein provided, requirement is not to exceed the number required for the larger subdivision.

**\*\*\*VOTER REGISTRATION\*\*\***

**VOTER REGISTRATION FOR STATE/LOCAL PRIMARY**

Aug. 17	Mail Registration for state/local Primary: Last day to postmark application and last day it must be received by board of elections is Aug. 22. §5-210(3)
Aug. 17	In person registration for state/local Primary: Last day application must be received by board of election to be eligible to vote in primary election. §5-210, 5-211, 5-212
Aug. 22	Changes of address for state/local Primary received by this date must be processed. §5-208(3)
Oct. 12	Mail Registration: Last day to postmark application for general election and last day it must be received by board of elections by Oct. 17. §5-210(3)

**STATE/LOCAL ELECTION VOTER REGISTRATION FOR GENERAL**

Oct. 12	In person registration: Last day application must be received by board of election to be eligible to vote in general election. If honorably discharged from the military or have become a naturalized citizen since October 12 <sup>th</sup> , you may register in person at the board of elections up until October 27 <sup>th</sup> (10/28 Saturday) §5-210, 5-211, 5-212
Oct. 17	Changes of address received by this date must be processed. §5-208(3)
Oct. 12	Change of Party Enrollment: Last day to receive. §5-304(3)

**\*\*\*VOTING BY ABSENTEE\*\*\***

**ABSENTEE VOTING FOR STATE/LOCAL PRIMARY**

Sept. 4	Last day to postmark application for state/local primary ballot. §8-400(2)(c)
Sept. 10	Last day to apply in person for state/local primary ballot. §8-400(2)(c)
Sept. 10	Last day to postmark state/local ballot. Must be received by the county board no later than Sept. 18 <sup>th</sup> . §8-412(1)
Sept. 11	Last day to deliver state/local primary ballot in person to county board, by close of polls. §8-412(1)

**MILITARY VOTERS/SPECIAL FEDERAL FOR STATE/LOCAL PRIMARY**

Aug. 10	First day to mail ballot to Military/Special Federal Voter. §10-108(1)
Aug. 17	Last day for a board of elections to receive application for Military ballot for state/local primary if not previously registered. §10-106(5)
Sept. 4	Last day for a board of elections to receive Military application for state/local primary if previously registered. §10-106(5)
Sept. 10	Last day to apply personally for Military ballot for state/local primary if previously registered. §10-106(5)
Sept. 10	Last day to postmark Military ballot for state/local primary and date it must be received by the board of elections is September 18 <sup>th</sup> . §10-114(1)

**ABSENTEE VOTING FOR GENERAL ELECTION**

Oct. 30	Last day to postmark application or letter of application for general election ballot. §8-400(2)(c)
Nov. 5	Last day to apply in person for ballot for general election ballot. §8-400(2)(c)
Nov. 5	Last day to postmark general election ballot. Must be received by the county board no later than Nov. 9 <sup>th</sup> . §8-412(1)
Nov. 6	Last day to deliver general election ballot in person to county board, by close of polls on election day. §8-412(1)

**MILITARY/SPECIAL FEDERAL VOTERS FOR GENERAL**

Oct. 5	Date to transmit Military voters' absentee ballots for state/local offices and proposals, per federal court order.
Oct. 28	Last day for a board of elections to receive application for a Military absentee ballot if not previously registered. §10-106(5) (10/28 Saturday)
Oct. 30	Last day for a board of elections to receive Military/Special Federal absentee application, if by mail and previously registered. §10-106(5)
Nov. 5	Last day to apply personally for a Military General Election ballot if previously registered. §10-106(5)
Nov. 5	Last day to postmark Military/Special Federal ballot and it must be received by the board of elections is Nov. 19 <sup>th</sup> . §10-114(1) §11-212

**FINANCIAL DISCLOSURE DATES FOR FILING:**

PRIMARY ELECTION	
32 Day Pre-Primary	August 10
11 Day Pre-Primary	August 31
10 Day Post Primary	September 21
August 28 <sup>th</sup> thru Sept. 10 <sup>th</sup> *	

GENERAL ELECTION	
32 Day Pre-General	October 5
11 Day Pre-General	October 26
27 Day Post-General	December 3
Oct. 23 <sup>rd</sup> thru Nov. 5 <sup>th</sup> *	

\* During this time period any contribution or loan which exceeds \$1,000 must be reported within 24 hours of receipt. This same contribution or loan must also be reported in the Post-Election report. IE Committees have additional and different reporting obligations. See §14-107(4)(a).

2018 Periodic Reports	
January 16 <sup>th</sup>	
July 16 <sup>th</sup>	

FINANCIAL DISCLOSURE  
 DATES FOR FILING:

PRIMARY ELECTION §14-108(1)	
32 Day Pre-Primary	August 10
11 Day Pre-Primary	August 31
10 Day Post-Primary	September 21
24 Hour Notice §14-107(1)(a)	August 28 <sup>th</sup> thru Sept. 10 <sup>th</sup>

GENERAL ELECTION §14-108(1)	
32 Day Pre-General	October 5
11 Day Pre-General	October 26
27 Day Post-General	December 3
24 Hour Notice §14-108(2)	October 23 <sup>rd</sup> thru November 5 <sup>th</sup>

Periodic Reports §14-108(1)	
	January 16 <sup>th</sup>
	July 16 <sup>th</sup>

Additional Independent Expenditure Reporting	
24 Hour Notice §14-107(3) (b) & (c)	Primary: Aug. 13 <sup>th</sup> thru Sept. 10 <sup>th</sup> General: Oct. 8 <sup>th</sup> thru Nov. 5 <sup>th</sup>
Weekly Notice	Refer to §14-107(3)(b)

DRAFT

**III. UOCAVA Enforcement Activity by the  
Attorney General in 2018**

**D. Other Enforcement Activity to Obtain UOCAVA  
Compliance**

**New York**

(a) The proposal is only a temporary fix and the commenter recommends a long-term solution to address the entire field serving students with disabilities.

(b) The commenter questions whether there is a shortage in the students with disabilities field and whether this proposal will benefit the field.

(c) The commenter is concerned that the proposal will burden the Office of Teaching Initiatives (OTI).

(d) The commenter is concerned about ensuring the rigor of the 45 hours of CTLE required.

(e) Last, the commenter is concerned that the requirement of "at least 75 percent of the candidate's time" teaching students in the grade levels of the extension sought is an "unwieldy standard" that will be difficult to determine.

**DEPARTMENT RESPONSE:**

In response to the comments above:

(a) While the proposal may be a temporary fix, the Department has been working with the field on developing long-term solutions to the issues facing those serving Students with Disabilities.

(b) Although the Department is unaware of "exact numbers," the proposal is directly responding to concerns raised in the field, by those serving the target population, school administrators, and the public.

(c) Please see response to COMMENT #2 above.

(d) Please see response to COMMENT #4 above.e

(e) Again, this is a standard that OTI will work with the OSE to assess whether a candidate has met the requirement for three years of experience (75% of which must be in the grade level extension sought).

**6. COMMENT:**

Several commenters raised concerns that 45 hours of CTLE is not sufficient to provide teachers with the knowledge and skills to teach a new age group, mainly because CTLE credits do not require individuals to demonstrate mastery of the knowledge and skills of the coursework. The commenters recommend not allowing CTLE credits to be used for granting the proposed extensions.

**DEPARTMENT RESPONSE:**

The Department agrees that CTLE alone would not be sufficient. However, the Department believes that CTLE plus three years of teaching in an adjacent grade level are sufficient to successfully prepare already certified teachers to teach a new developmental age group. In addition, OTI will work with the OSE to assess the CTLE used to satisfy the requirements for the extension and ensure that the CTLE is appropriate for the grade level extension sought.

**7. COMMENT:**

One commenter raised concerns regarding the Students with Disabilities extension and the choice of requirements proposed. The commenter is concerned that there is no specific pedagogy directly linked to grade-level performance and noted that the required coursework should target human development in children and/or adolescents with special needs in the specific grade levels. The commenter also believes that behavior management should be included, with behavioral interventions as well.

**DEPARTMENT RESPONSE:**

In response to the concerns raised, the Department believes that because the individuals seeking extensions already have a base teaching certificate in a students with disabilities certificate area in an adjacent grade level. The majority of the pedagogical, human development, and behavioral management content for a new developmental level would already be included in educator preparation programs for students with disabilities. In addition, OTI and the Office of Special Education will work together to assess the CTLE used to satisfy the requirements for the extension and ensure that the CTLE is appropriate for the grade level extension sought.

**8. COMMENT:**

One commenter raised the concern that the extension for teachers with a current students with disabilities certification in grades 1-6 to teach PreK-K will not be prepared to teach in this grade band with either CTLE or just one college course. The commenter asserts that the first six years are the most important in intervention for students with disabilities. While the commenter recognizes a teacher shortage, they believe that allowing individuals to obtain certifications they are not qualified to hold is not the way to solve the problem.

**DEPARTMENT RESPONSE:**

The proposed amendment provides flexibility to teachers who are already certified teachers of students with disabilities to gain certification in a narrow adjacent grade band in which they have had three years of similar teaching experience and have at least 45 additional CTLE hours or one college level course in the grade levels of the extension sought. The Department believes that these additional requirements provide teachers with the knowledge and skills necessary to teach in adjacent grade bands.

## State Board of Elections

### NOTICE OF ADOPTION

#### Voting by Certain Special Federal Voters

**I.D. No.** SBE-47-17-00009-Ae

**Filing No.** 232e

**Filing Date:** 2018-03-08e

**Effective Date:** 2018-03-28e

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Addition of Part 6219 to Title 9 NYCRR.

**Statutory authority:** Election Law, sections 11-220, 3-102[1] and [17]

**Subject:** Voting by certain special federal voters.

**Purpose:** Provide procedures for certain special federal voters.

**Text of final rule:** A new Part 6219 is hereby added to 9 NYCRR, to read as follows:

*6219 Certain Special Federal Voters Also Entitled to State and Local Ballots*

*6219.1 Absentee Voters Entitled to Special Federal Ballot. Voters who submit an otherwise valid Federal Post Card Application pursuant to Article 11 Title 2 of the Election Law and 52 U.S.C. § 20302[a][4] and select on such application the category "I am a U.S. citizen living outside the country, and I intend to return" are entitled to a special federal ballot. Such voters when also duly registered to vote pursuant to Article 5 of the Election Law are entitled to the state and local ballot in conformity with the provisions of the Election Law.*

*6219.2 Procedure. Voters meeting the criteria of 6219.1 shall be entered into the special federal ballot transmittal system provided by the state board of elections. Such special federal voters shall be identified therein apart from other special federal voters as also entitled to receive a state and local ballot. Such voters shall receive the special federal ballot in conformity with state and federal law, and shall receive the state and local portion of the ballot in conformity with state law through the aforesaid transmittal system.*

*6219.3 No New State Law Entitlement. Nothing herein shall be construed to permit a voter who does not meet the requirements for voter registration provided for in Article 5 of the Election law to receive a ballot containing state or local offices.*

**Final rule as compared with last published rule:** Nonsubstantive changes were made in section 6219.1.

**Text of rule and any required statements and analyses may be obtained from:** Brian L. Quail, Esq., New York State Board of Elections, 40 North Pearl Street, Stc 5, Albany, New York 12207-2729, (518) 474-2063, email: brian.quail@elections.ny.gov

#### Revised Regulatory Impact Statement

There is not need to revise the Regulatory Impact Statement previously published, as the amendment to the rule was totally nonsubstantive and technical. Specifically, the rule was amended to reflect a change in a Federal Post Card Application form. The form previously read "I am a U.S. citizen residing outside the U.S., and I intend to return". The proposed regulation was simply amended to read as the form now reads, to wit: "I am a U.S. citizen living outside the country, and I intend to return."

#### Revised Regulatory Flexibility Analysis

For the prior publication of this rule, a Statement in Lieu of Regulatory Flexibility Analysis was published because under SAPA 202-b(3)(a), when a rule does not impose an adverse economic impact on small business or local government and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on such entities, the agency may file a Statement in Lieu of. The amendment to the proposed rulemaking, as the original rulemaking, will not impact small business operations or local government functions. This rule provides procedures for processing certain applications for special federal ballots. It imposes no additional compliance, regulatory or reporting requirements on local governments or small businesses.

The amendment to the rule was totally nonsubstantive and technical. Specifically, the rule was amended to reflect a change in a Federal Post Card Application form. The form previously read "I am a U.S. citizen residing outside the U.S., and I intend to return". The proposed regulation was simply amended to read as the form now reads, to wit: "I am a U.S. citizen living outside the country, and I intend to return."

**Revised Rural Area Flexibility Analysis**

Under SAPA 202-bb(4)(a), when a rule does not impose an adverse economic impact on rural areas and the agency finds it would not impose reporting, recordkeeping, or other compliance requirements on public or private entities in rural areas, the agency may file a Statement in Lieu of. This rule has statewide application, providing procedure related to processing certain applications for special federal ballots. Accordingly, this rule has no adverse impact.

The amendment to the rule was totally nonsubstantive and technical. Specifically, the rule was amended to reflect a change in a Federal Post Card Application form. The form previously read "I am a U.S. citizen residing outside the U.S., and I intend to return". The proposed regulation was simply amended to read as the form now reads, to wit: "I am a U.S. citizen living outside the country, and I intend to return."

**Revised Job Impact Statement**

Under SAPA 201-a(2)(a), when it is apparent from the nature and purpose of the rule that it will not have a substantial adverse impact on jobs and employment opportunities, the agency may file a Statement in Lieu of. This rulemaking, as is apparent from its nature and purpose, will not have an adverse impact on jobs or employment opportunities. The proposed amendment provides for a change to processing certain applications for special federal voters. This rulemaking imposes no regulatory burden on any facet of job creation or employment.

The amendment to the rule was totally nonsubstantive and technical. Specifically, the rule was amended to reflect a change in a Federal Post Card Application form. The form previously read "I am a U.S. citizen residing outside the U.S., and I intend to return". The proposed regulation was simply amended to read as the form now reads, to wit: "I am a U.S. citizen living outside the country, and I intend to return."

**Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2021, which is no later than the 3rd year after the year in which this rule is being adopted.

**Assessment of Public Comment**

The agency received no public comment.

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## Department of Environmental Conservation

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**NOTICE OF ADOPTION**

**Management of Crustaceans, Horseshoe Crabs (HSC) and Whelk. Protection of Terrapin**

**ID. No.** ENV-28-17-00003-Ae

**Filing No.** 244

**Filing Date:** 2018-03-12

**Effective Date:** 2018-03-28

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Parts 44 and 50 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 13-0330(6) and 13-0331(7)

**Subject:** Management of crustaceans, horseshoe crabs (HSC) and whelk. Protection of terrapin.

**Purpose:** Modify rules on terrapin excluder device, HSC harvest limit and whelk reporting.

**Text of final rule:** 6 NYCRR 44.2(a)(3) is amended to read as follows:

(3) 'Terrapin Excluder Device' means a rectangular [metal] device not larger than (in either dimension) [6] *four and three-quarters* inches wide by [2] *one and three-quarters* inches high attached to the end of the entrance funnel of a crab trap.

Paragraph 6 NYCRR 44.2(d)(1) is repealed.

New paragraph 6 NYCRR 44.2(d)(1) is adopted to read as follows:

(1) *A terrapin excluder device, as defined in paragraph 44.2(a)(3) of this section, must be used on all non-collapsible, Chesapeake-style crab pots or traps that are fished in the areas detailed below:*

(i) *within the bays, harbors, coves, rivers, tributaries and creeks that enter into Long Island Sound;*

(ii) *within the harbors, coves, ponds, rivers, and creeks that enter into Flanders Bay, Great Peconic Bay, Cutchogue Harbor, Little Peconic*

*Bay, Hog Neck Bay, Noyack Bay, Southold Bay, Shelter Island Sound, Pipes Cove, Greenport Harbor, Orient Harbor, Hallock Bay, Northwest Harbor, Gardiners Bay, Napeague Bay and Fort Pond Bay;*

(iii) *within the rivers, tributaries, creeks and basins that enter into Jamaica Bay, Hempstead Bay, South Oyster Bay, Great South Bay, Moriches Bay and Shinnecock Bay on the south shore of Long Island;*

(iv) *within the creeks and tributaries that enter into Raritan Bay, Arthur Kill and Kill Van Kull surrounding Staten Island; and*

(v) *within the tributaries and creeks of the Hudson River that lie within the marine and coastal district, as defined in Environmental Conservation Law 13-0103, including the waterways within Piernont marsh.*

6 NYCRR 44.2(d)(2) and (3) are amended to read as follows:

(2) The terrapin excluder device, as defined in paragraph 44.2(a)(3) of this section, shall be securely fastened inside each funnel to effectively reduce the size of the funnel opening to no larger than [six] *four and three-quarters* inches wide and [two] *one and three-quarters* inches high.

(3) *If the department determines that mortality of diamondback terrapin ('Malaclemys terrapin') in blue crab pots is causing a decline in the terrapin population of a given water body or area that is not listed in paragraph (d)(1) of this Section, the department may by order mandate use of terrapin excluder devices in such areas.* The Director, [Bureau] Division of Marine Resources, is authorized to issue orders to designate areas in which terrapin excluders are required pursuant to this section.

Paragraph 6 NYCRR 44.3(a)(4) is amended to read as follows:

(4) 'Harvest limit' means the maximum number of horseshoe crabs that can be [harvested and/or landed by a vessel during a period of time, not less than 24 hours, in which fishing is conducted. If a vessel is not used in the harvest of horseshoe crabs, the harvest limit means the maximum number of horseshoe crabs that can be harvested and possessed per licensed individual, during a period of time, not less than 24 hours, in which fishing is conducted. Harvesters may not at any time possess live horseshoe crabs aboard their vessel in excess of the number permitted under the harvest limit.] *taken or possessed by a permit holder in a 24-hour period. No more than two harvest limits may be possessed aboard a vessel or in a vehicle, provided that at least two permit holders are on board the vessel or in the vehicle.*

6 NYCRR Section 50.1 is renumbered to subdivision 50.1(b).

Section 50.1 is amended to read as follows:

*50.1 Marine Gastropodse*

(a) *Definitions.e*

(1) *'Carnivorous marine gastropods' shall mean marine snails; including channeled whelk ('Busycotypus canaliculatus'), knobbed whelk ('Busycon carica'), and moon snails (Naticidae family); that prey on other animals.*

(2) *'Whelk' shall mean channeled whelk and knobbed whelk.e*

(b) When the commissioner, or the commissioner's designee authorized to designate shellfish lands as uncertified, determines that carnivorous marine gastropods may be hazardous for use as food for human consumption, due to the presence of marine biotoxins, he shall take such action as he deems necessary to protect the public health and welfare. The commissioner, or the commissioner's designee authorized to designate shellfish lands as uncertified, may prohibit activities such as, but not limited to, the taking, possessing, processing, packing, transporting, offering or exposing for sale carnivorous gastropods from areas that are designated as uncertified for the harvest of shellfish pursuant to section 47.4 of this Title due to the presence of marine biotoxins in shellfish. The commissioner may advise the general public, the industry and public health officials that carnivorous gastropods may be hazardous for use as food.

A new section 50.2 is adopted to read as follows:

*50.2 Reporting Requirements and Confidentiality of Data.*

(a) *Commercial whelk license holders.e*

(1) *Any person who is the holder of a commercial whelk license issued pursuant to section 13-0330 of the Environmental Conservation Law shall complete and submit an accurate Fishing Vessel Trip Report for each commercial fishing trip, detailing all fishing activities and all species landed, on a form prescribed by the department. The license holder shall submit such fishing reports monthly to the department within 15 days after the end of each month or at a frequency specified by the department in writing. Fishing Vessel Trip Reports shall be completed, signed, and submitted to the department for each month; if no fishing trips were made during a month, a report must be submitted for that month stating no trips were made. Incomplete Fishing Vessel Trip Reports or unsigned reports will not satisfy these reporting requirements. Any New York license holder who is also the holder of a federal fishing permit issued by NOAA Fisheries Service must instead meet the reporting requirements specified by NOAA Fisheries Service. If requested in writing by the department, New York license holders who also hold federal fishing permits shall submit to the department the state (blue) copy of the Fishing Vessel Trip Report (NOAA Form No. 88-30) for the month or months identified in the written notification.*

## 9 NYCRR § 6219.1

This document reflects those changes received from the NY Bill Drafting Commission through November 16, 2018

*New York Codes, Rules, and Regulations > TITLE 9. EXECUTIVE DEPARTMENT > SUBTITLE V. STATE BOARD OF ELECTIONS > PART 6219. CERTAIN SPECIAL FEDERAL VOTERS ALSO ENTITLED TO STATE AND LOCAL BALLOTS*

### § 6219.1 Absentee voters entitled to special Federal ballot

Voters who submit an otherwise valid Federal Post Card Application pursuant to article 11 Title 2 of the Election Law and [52 U.S.C. § 20302\(a\)\(4\)](#) and select on such application the category "I am a U.S. citizen living outside the country, and I intend to return" are entitled to a special Federal ballot. Such voters when also duly registered to vote pursuant to article 5 of the Election Law are entitled to the State and local ballot in conformity with the provisions of the Election Law.

### Statutory Authority

#### Section statutory authority:

Election Law, § A11T2. Section statutory authority: Election Law, § A5Section

### History

Added 6219.1 on 3/28/18.

NEW YORK CODES, RULES AND REGULATIONS

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## 9 NYCRR § 6219.2

This document reflects those changes received from the NY Bill Drafting Commission through November 16, 2018

*New York Codes, Rules, and Regulations > TITLE 9. EXECUTIVE DEPARTMENT > SUBTITLE V. STATE BOARD OF ELECTIONS > PART 6219. CERTAIN SPECIAL FEDERAL VOTERS ALSO ENTITLED TO STATE AND LOCAL BALLOTS*

### **§ 6219.2 Procedure**

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Voters meeting the criteria of section 6219.1 shall be entered into the special Federal ballot transmittal system provided by the State Board of Elections. Such special Federal voters shall be identified therein apart from other special Federal voters as also entitled to receive a State and local ballot. Such voters shall receive the special Federal ballot in conformity with State and Federal law, and shall receive the State and local portion of the ballot in conformity with State law through the aforesaid transmittal system.

### **History**

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Added 6219.2 on 3/28/18.

NEW YORK CODES, RULES AND REGULATIONS

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## 9 NYCRR § 6219.3

This document reflects those changes received from the NY Bill Drafting Commission through November 16, 2018

*New York Codes, Rules, and Regulations > TITLE 9. EXECUTIVE DEPARTMENT > SUBTITLE V. STATE BOARD OF ELECTIONS > PART 6219. CERTAIN SPECIAL FEDERAL VOTERS ALSO ENTITLED TO STATE AND LOCAL BALLOTS*

### **§ 6219.3 No new State law entitlement**

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Nothing herein shall be construed to permit a voter who does not meet the requirements for voter registration provided for in article 5 of the Election Law to receive a ballot containing State or local offices.

### **History**

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Added 6219.3 on 3/28/18.

NEW YORK CODES, RULES AND REGULATIONS

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