

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA

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UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF ALABAMA; BOB RILEY,
GOVERNOR OF THE STATE OF ALABAMA;
TROY KING, ATTORNEY GENERAL
OF THE STATE OF ALABAMA; NANCY L.
WORLEY, SECRETARY OF STATE OF THE
STATE OF ALABAMA,

Defendants.

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FEDRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Civil Action No. _____

COMPLAINT

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States pursuant to the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff *et seq.*, which provides, *inter alia*, that absent uniformed services voters and overseas 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." 42 U.S.C. § 1973ff-1. This action is brought to ensure that UOCAVA voters, who are otherwise qualified to vote in Alabama's federal primary run-off elections, will have an opportunity to vote in those elections and have their ballots counted. The United States seeks both a preliminary injunction to obtain compliance with the federal law at the June 27, 2006 run-off election, and permanent relief to ensure future compliance with UOCAVA.

2. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §

1345.

3. The Defendant State of Alabama is charged with the responsibility of assuring that State election laws, as applied, comply with the provisions of UOCAVA.

4. Defendant Bob Riley is sued in his official capacity as Governor of the State of Alabama. Defendant Troy King is sued in his official capacity as Attorney General of the State of Alabama. Defendant Nancy L. Worley is sued in her official capacity as the Secretary of State of the State of Alabama. The Secretary of State is charged with receiving the results of federal elections from the officials of each county. Ala. Code §§ 17-20-3, 17-19-4. The Governor, in the presence of the Secretary of State and the Attorney General, or either of them in the absence of the other, is charged with ascertaining which candidates or electors are elected and notifying them by proclamation. Ala. Code §§ 17-20-4, 17-19-5.

5. On June 6, 2006, the State of Alabama will conduct a federal primary election in which voters will select their respective parties' candidates for seven seats in the United States House of Representatives. A run-off election will be held on June 27, 2006, if necessary, if no candidate receives a majority of votes in the primary. Alabama has conducted three run-off elections for Congressional seats in recent years. Specifically, in 2004 there was one run-off election for a seat in the United States House of Representatives, and in 2002 there were two run-off elections for seats in the United States House of Representatives.

6. County election officials of Alabama have received timely requests for absentee ballots from voters who are entitled to vote pursuant to the provisions of UOCAVA.

7. Under Alabama law, only those absentee ballots postmarked by the day before the

election, and received by noon on the day of election, are counted. Ala. Code § 17-10-23. If a primary run-off election is required in 2006, the absentee ballots must be received by election officials by noon on June 27, 2006. The county executive committee must certify and return the results of the primary election to the state executive committee no later than June 14, 2006, and the results of the primary election must be publicly declared no later than June 16, 2006. Ala. Code § 17-16-35.

8. In order to allow UOCAVA voters a fair opportunity to vote by absentee ballot, election officials in Alabama must mail the ballots to the voters sufficiently in advance of the election so that voters can receive, cast and return their absentee ballots by the deadline established under Alabama law.

9. Based on data from the United States Postal Service and the Military Postal Service Agency, the Federal Voting Assistance Program ("FVAP") of the Department of Defense and the United States Election Assistance Commission recommend that States allow 45 days for the round-trip transit of an overseas ballot. At a minimum, FVAP has determined that States must provide no less than 30 days for the round-trip transit of a ballot to overseas locations.

10. Because of the compressed period of time between the primary and run-off elections in Alabama, absentee ballots will not be mailed sufficiently before the June 27, 2006 federal run-off election, if one is necessary, to afford UOCAVA voters an opportunity to vote. Election officials will mail absentee ballots for any run-off election no earlier than several days after the June 6 primary election, and likely after the certification and public declaration of the results of the primary election on June 14 and 16, respectively, allowing no more than 13 days for

round-trip transmission of ballots.

11. The inability of election officials in Alabama to mail absentee ballots to UOCAVA voters on a date sufficiently in advance of June 27, 2006, so as to allow the voting and return of ballots by the deadline established by State law, will deprive certain specially covered United States citizens of an opportunity to vote in the federal primary run-off election in violation of UOCAVA.

12. An order of this Court is necessary requiring Defendants to take corrective action in order to protect the rights granted by UOCAVA both in the 2006 elections and in future elections.

WHEREFORE, plaintiff prays that this Court hear this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345; issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of Alabama officials to send absentee ballots to UOCAVA voters in sufficient time to be received, cast, and returned by the State's deadline in any federal run-off election violates UOCAVA; and issue permanent injunctive relief ordering the defendants, their agents and successors in office, and all persons acting in concert with them:

- (1) to include, in conjunction with the mailing of regular absentee ballots to UOCAVA voters for the June 6, 2006 federal primary election, a blank state authorized special write-in ballot to be used in the event of a federal run-off election on June 27, 2006, along with information regarding how voters can obtain all necessary information about any possible federal run-off election and other appropriate instructions regarding the casting of

- such ballot;
- (2) within eight (8) days of the June 6, 2006 federal primary, to: (a) publish prominently on the websites of the Secretary of State, as well as any County election website where a run-off election will occur, information identifying the federal contests for which a run-off election will be necessary under State law and the names of the candidates for each run-off election; and (b) notify the Federal Voting Assistance Program and other appropriate news media and websites that are focused on military and overseas voters, regarding the federal races involved in a run-off election and the candidates participating in that election;
- (3) to count as validly cast ballots, in contests relating to the selection of nominees for federal office, those ballots cast by voters, who are qualified to vote in Alabama pursuant to UOCAVA, and who otherwise comply with State law for absentee voting, provided that the ballot is executed and sent (whether by federal postal services or commercial delivery services) or delivered in person by June 27, 2006, and received on or before noon on Friday, July 7, 2006. Notwithstanding the above, election results may be formally certified based on ballots received by the close of the polls in any election in which the number of outstanding absentee ballots from UOCAVA voters could not mathematically alter the outcome, subject to amendment or re-certification for any election where such ballots returned

by the extended receipt deadline change the total of votes cast for any candidate;

- (4) to accept for federal offices, at the June 27, 2006 primary run-off election, the Federal Write-in Absentee Ballot provided for in UOCAVA, 42 U.S.C. § 1973ff-2, provided that ballot is cast by a UOCAVA voter, is executed and sent (whether by federal postal services or commercial delivery services) or delivered in person by June 27, 2006, and is received by mail on or before noon on July 7, 2006;
- (5) to accept, for the June 27, 2006 primary run-off election, any special write-in ballot or the Federal Write-in Absentee Ballot transmitted by facsimile or by email of a scanned completed ballot, along with any other documents required by State law, provided that the ballot is cast by a UOCAVA voter and is received on or before noon on June 27, 2006;
- (6) to take such steps as are necessary to afford UOCAVA voters who are eligible to participate in the June 27, 2006 federal primary run-off election a reasonable opportunity to learn of this Court's order;
- (7) to take such steps as are necessary to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future run-off elections for federal office; and
- (8) to provide a report to the United States concerning the number of UOCAVA ballots, including Federal Write-in Ballots, by county, received

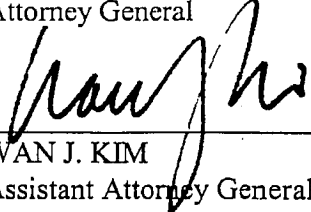
and counted for the June 27, 2006 federal primary run-off election within
45 days of that election pursuant to this Court's order.

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

Respectfully submitted this the 9th day of March, 2006.

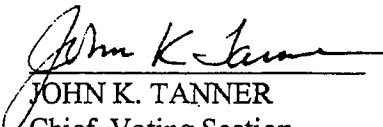
ALBERTO R. GONZALES
Attorney General

By:

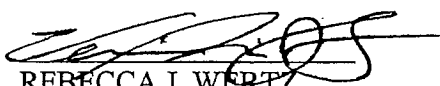


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