

ORIGINAL

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
HARTFORD DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
STATE OF CONNECTICUT;)
SUSAN BYSIEWICZ, Connecticut)
Secretary of the State, in her official capacity,)
)
Defendants.)
_____)

Civil Action No. 306cv 1192 (JBA)

STIPULATED AGREEMENT

Plaintiff United States of America ("United States") initiated this action to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff *et seq*, against Defendants State of Connecticut and Susan Bysiewicz, the Connecticut Secretary of the State (collectively, "Defendants"). The United States' complaint alleges violations of UOCAVA arising from Connecticut election officials' failure to provide absent uniformed services voters and overseas voters ("UOCAVA voters") with sufficient opportunity to participate in Connecticut's August 8, 2006 federal primary election. Specifically, some municipal town officials in the state failed to provide absentee ballots to all eligible UOCAVA voters with sufficient time for them to be transmitted, returned and counted in the August 8, 2006 federal primary election.

The United States and Defendants, through their respective counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties share the goal of providing absent uniformed service and overseas voters with sufficient

opportunity to participate in the upcoming primary and general elections. Accordingly, the parties negotiated in good faith and hereby agree to the entry of this Stipulated Agreement as an appropriate resolution of the claims alleged in the United States' complaint. Accordingly, the United States and Defendants stipulate to the facts and Stipulated Agreement set forth below:

1. This action is brought by the Attorney General of the United States 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 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. The Attorney General is granted enforcement powers under UOCAVA, 42 U.S.C. § 1973ff-4, and files this complaint to ensure that UOCAVA voters who are qualified to vote in the federal primary election to be conducted on August 8, 2006 in the State of Connecticut will have an opportunity to vote in that election and have their ballots counted. The United States seeks declaratory and injunctive relief to obtain compliance with federal law for the August 8, 2006 federal primary election and 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 and 2201.

3. Defendant State of Connecticut is obligated to comply with UOCAVA and ensure that UOCAVA voters have sufficient time to receive, cast and return their absentee ballots.

4. Defendant Susan Bysiewicz is Secretary of the State of Connecticut and is sued in her official capacity. The Secretary of the State is the Commissioner of Elections of the State of Connecticut, and as such is responsible for the administration of state laws affecting voting, and

for assuring that elections in the state are conducted in accordance with law. CONN. GEN. STAT. § 9-3 (2006). The Secretary's principal office is in Hartford, Connecticut.

5. In the federal primary election of August 8, 2006, eligible voters of the State of Connecticut will participate in the selection of nominees for a seat in the United States Senate or a seat in the United States House of Representatives. A federal general election will be held November 7, 2006.

6. Under state law, absentee ballots sent from UOCAVA voters must be received by the close of the polls on the day of the election to be counted for all federal and state offices, and must otherwise satisfy the requirements of Connecticut law. CONN. GEN. STAT. § 9-140b (2006). For the federal primary election of Tuesday, August 8, 2006, the deadline for receipt of absentee ballots is the close of the polls on election day, *i.e.*, 8:00 p.m. Eastern Daylight Time on August 8, 2006. CONN. GEN. STAT. § 9-174 (2006).

7. UOCAVA provides for an official post card form, referred to as the Federal Post Card Application ("FPCA"), "for simultaneous voter registration application and absentee ballot application" by UOCAVA voters. 42 U.S.C. §§ 1973ff(b)(2), 1973ff-1(a)(4).

8. UOCAVA requires that a state provide an absentee ballot to an eligible UOCAVA voter "for each subsequent election for federal office held in the state through the next 2 regularly scheduled general elections for Federal office," if requested by the voter pursuant to the FPCA. 42 U.S.C. § 1973ff-3(a). Thus, for the August 8, 2006 federal primary election, Connecticut election officials are required to provide absentee ballots to all UOCAVA voters who have filed timely applications, which include FPCA requests filed since January 1, 2004 to receive ballots

for subsequent elections, and who are otherwise qualified to vote in that election (“qualified UOCAVA voters”).

9. Municipal election officials in the State of Connecticut have received timely requests for absentee ballots from qualified UOCAVA voters.

10. In order to provide qualified UOCAVA voters a fair opportunity to vote by absentee ballot, election officials in Connecticut must mail the ballots to the voters sufficiently in advance of election day to allow the voters to receive, cast and return their absentee ballots by the deadline established under Connecticut law.

11. Based on data from the United States Postal Service and the United States 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.

12. In some Connecticut towns, election officials failed to mail absentee ballots to qualified UOCAVA voters who had filed timely requests for such ballots sufficiently in advance of the August 8, 2006 federal primary election to allow voters to receive the ballot, cast a vote for all federal offices, and return the ballot to election officials in time to be counted under Connecticut law. Many Connecticut towns did not mail absentee ballots to qualified UOCAVA voters at least 30 days before the election. Several town clerks reported to the Department of Justice that as of July 25, 2006, they were not able to locate or had not yet located the FPCA

requests submitted in 2004. After July 25, 2006, some Connecticut towns sent absentee ballots via expedited delivery service.

13. The Secretary of the State has taken a number of steps to advise and instruct municipal election officials of the requirements of UOCAVA and their obligations to send timely absentee ballots to these voters.

14. The failure of municipal election officials in Connecticut to mail absentee ballots to qualified UOCAVA voters sufficiently in advance of August 8, 2006, to allow the voting and return of ballots by the close of the polls on election day will deprive United States citizens of an opportunity to vote in a federal primary election contrary to the provisions of UOCAVA.

15. This Stipulated Agreement is final and binding as to all issues resolved herein.

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:

A. The Secretary of the State's Office shall continue to advise municipal clerks in Connecticut of their obligations to send absentee ballots to all qualified UOCAVA voters, including those who submitted a valid FPCA request after January 1, 2004 and will forthwith provide all municipal clerks with a copy of this Stipulated Agreement and Court Order. If due to willful and material neglect of duty or incompetence, any municipal clerk fails to send an absentee ballot to a qualified UOCAVA voter, the Secretary of State shall report such violation to the State Elections Enforcement Commission and the Office of the Chief State's Attorney pursuant to CONN. GEN. STAT. §§ 9-7b, 7-22 and 9-355. In addition, on or before August 4, 2006, the state shall report to counsel for the United States her efforts to ensure that all

municipalities have sent absentee ballots to all qualified UOCAVA voters in their respective jurisdictions and shall provide counsel with any information in her possession about municipalities' compliance with their obligations under UOCAVA.

B. For the August 8, 2006 primary election for federal office, the Secretary of the State shall take such steps as are necessary to ensure that appropriate election officials accept for federal offices, in the August 8, 2006 federal primary election, the Federal Write-in Absentee Ballot provided for in UOCAVA, 42 U.S.C. § 1973ff-2;

C. For the August 8, 2006 primary election for federal office, the Secretary of the State shall take such steps as are necessary to ensure that appropriate election officials count as validly cast ballots, in contests relating to the selection of nominees for federal office, those ballots, including Federal Write-in Absentee Ballots, cast by qualified UOCAVA voters, as long as such ballots are executed and sent (whether by federal postal services or commercial delivery services) by August 8, 2006, and received by 8:00 p.m. on August 25, 2006 and otherwise satisfy the requirements of Connecticut law. 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;

D. The Secretary of the State shall take such steps to afford UOCAVA voters eligible to participate in the August 8, 2006 primary election a reasonable opportunity to learn of this Court's order by issuing a press statement for immediate release, posted immediately on the Secretary of the State's web site, and distributed to the Federal Voting Assistance Program,

International Herald Tribune (<http://www.iht.com>), USA Today International (<http://www.usatoday.com>), Military Times Media Group (cvinch@navytimes.com; cvinch@armytimes.com; cvinch@airforcetimes.com; cvinch@marinecorpstimes.com); Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>), Stars and Stripes (<http://www.estripes.com>), and any other appropriate newspaper or news media in the state. The news release shall, at the very least: (1) summarize this order; (2) provide appropriate contact information at the Secretary of the State's office; (3) identify the contests for federal offices for the primary election and the candidates participating in those elections; and (4) notify UOCAVA voters that they can use the FWAB for federal elections in the August 8, 2006 primary election and where a FWAB can be downloaded or obtained;

E. The Secretary of the State shall provide a report to the Voting Section of the Civil Rights Division of the United States Department of Justice concerning the number of UOCAVA absentee ballots, including Federal Write-in Absentee Ballots, received and counted for the August 8, 2006 primary for federal office within 45 days of that election. This report will set forth the following information:

- (a) the number of valid absentee ballots from UOCAVA voters, by municipality, received and counted before the close of the polls on Tuesday, August 8, 2006;
- (b) the number of absentee ballots from UOCAVA voters, by municipality, received and counted after the close of the polls on August 8, 2006, but prior to 8:00 p.m. on August 25, 2006;
- (c) the number of absentee ballots from UOCAVA voters, by municipality, received later than 8:00 p.m. on August 25, 2006;

(d) the number of absentee ballots from UOCAVA voters, by municipality, that were not counted in the primary election and the reason those ballots were rejected by the municipality; and

(e) a list, by municipality, of the names and addresses of each qualified UOCAVA voter sent an absentee ballot between July 25, 2006 and August 8, 2006;

F. The Secretary of the State will work with the Department of Justice to ensure UOCAVA voters shall have a fair and reasonable opportunity to participate in future federal elections, including, but not limited to, training of municipal election officials regarding the requirements of UOCAVA; and

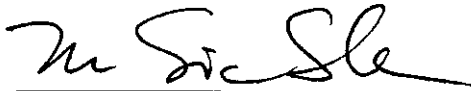
G. The Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Stipulated Agreement and to enter such relief as may be necessary to abate any UOCAVA violation with respect to future elections for federal offices.

The undersigned agree to entry of this Stipulated Agreement:

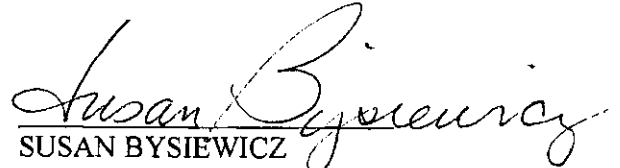
For the Plaintiff, United States of America:

For the Defendants:

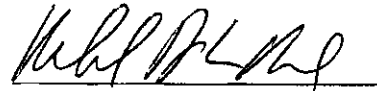
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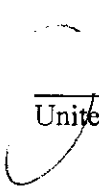
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SO ORDERED this 22 day of August, 2006



United States District Judge