

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,)
)
Plaintiff,)
) Case No. 10-cv-968
v.)
)
THE STATE OF NEW MEXICO and)
NEW MEXICO SECRETARY OF STATE)
DIANNA J. DURAN, in her official capacity,)
)
Defendants.)
)
_____)

SUPPLEMENTAL CONSENT DECREE

Plaintiff United States of America initiated this action to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009) (“MOVE Act”). On October 14, 2010, this Court entered a Consent Decree (ECF No. 7) as an appropriate resolution of UOCAVA violations alleged by the United States. The Consent Decree extended the deadlines by which New Mexico’s UOCAVA voters could return their ballots and imposed post-election reporting requirements on Defendants. The Decree also required Defendants to “take such actions as are necessary to ensure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including determining the cause of the late mailed ballots and taking any administrative or other actions needed to reduce the potential for future UOCAVA violations arising from New Mexico’s or the individual counties’ election practices.” Consent Decree at 7. The Consent Decree required the parties to confer on the

progress of this permanent relief and further required Defendants to provide the United States with a status report on their progress by March 15, 2011.

The parties have conferred in good faith and agree that this Supplemental Consent Decree, in combination with the other affirmative steps New Mexico has taken to come into compliance with UOCAVA, including legislative changes to its election calendar, specifies appropriate future relief as required by the original Consent Decree. Accordingly, the parties stipulate as follows:

1. Defendant State of New Mexico is obligated to comply with UOCAVA as amended by the MOVE Act.
2. Given the Defendants' noncompliance with UOCAVA during the November 2010 Federal general election and the Defendants' difficulties providing timely and accurate information to the United States both prior to that election and after the election as required by the Consent Decree, the adoption of monitoring and certification procedures for the 2012 Federal election cycle is appropriate and reasonable to ensure Defendants' ongoing compliance with UOCAVA.

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

1. Because UOCAVA enforcement depends on timely and accurate information about the extent of compliance by Defendants and each of New Mexico's counties, Defendants shall adopt the following procedures designed to determine statewide UOCAVA compliance during the 2012 Federal election cycle:

a. Beginning the 55th day prior to each Federal election, survey each New Mexico county to determine: (1) whether each county has received a sufficient number of printed absentee ballots sufficiently ahead of the 45-day mailing deadline to transmit those ballots as required by UOCAVA; (2) whether each county has the technical capacity to transmit all requested ballots by the requested method of transmission; (3) whether any county anticipates difficulties or a situation that would prevent it from transmitting all requested ballots to UOCAVA voters by the requested method of transmission and by the appropriate deadline; and (4) whether it would be appropriate for Defendants to provide additional support to any county to ensure that it meets the appropriate deadlines. Where additional support to the counties is appropriate, Defendants will provide it. Defendants shall provide the results of their survey to counsel for the United States in a format agreed to by the parties no later than 5:00 pm Eastern time on the 48th day before each Federal election.

b. By the 45th day prior to each Federal election, obtain written or electronic certifications, in a format agreed to by the parties, of: (1) the number of absentee ballot applications received by each county on or before the 45th day before each Federal election from any voter entitled to vote pursuant to UOCAVA and the method of transmission requested; (2) the date on which the county began sending absentee ballots to those UOCAVA voters; (3) the date on which and method of transmission by which the county completed sending those absentee ballots; and (4) an affirmative declaration that all UOCAVA ballots requested by the 45th day were transmitted by the 45th day by the requested method of transmission.

c. Compile the data provided by the counties described in paragraph 1(b) above into a spreadsheet format devised in consultation with the United States and transmit the spreadsheet electronically to counsel for the United States no later than 5:00 pm Eastern time on

the 44th day before each Federal election.

d. Certify in writing to counsel for the United States that all of the data reported pursuant to paragraph 1(b) of this Supplemental Decree is accurate to the best of their knowledge.

e. Obtain written or electronic certifications, in a format agreed to by the parties, of: (1) the number of absentee ballot applications received by each county after the 45th day and on or before the 30th day before each Federal election from any voter entitled to vote pursuant to UOCAVA and the method of transmission requested; and (2) the date on which and method of transmission by which the county sent the requested ballots; and (3) an affirmative declaration that all UOCAVA ballots requested after the 45th day and on or before the 30th day were transmitted promptly by the requested method of transmission.

f. Compile the data provided by the counties described in paragraph 1(e) above into a spreadsheet format devised in consultation with the United States and transmit the spreadsheet electronically to counsel for the United States no later than 5:00 pm Eastern time on the 29th day before each Federal election.

g. Certify in writing to counsel for the United States that all of the data reported pursuant to paragraph 1(e) of this Supplemental Decree is accurate to the best of their knowledge.

2. Defendants will take all necessary steps to ensure that each of its counties transmits absentee ballots by the 45th day before a Federal election by the requested method of transmission to all UOCAVA voters who requested absentee ballots by that day.

3. This Supplemental Consent Decree shall remain in effect through January 15, 2013, unless extended by the Court on motion by one or more of the parties.

4. Nothing in this Supplemental Consent Decree shall be construed to waive any of New Mexico's obligations under UOCAVA or the MOVE Act.

5. 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 Supplemental Consent Decree.

Date: June 30, 2011

The undersigned agree to entry of this Consent Decree.

For the Plaintiff:

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United States Attorney
District of New Mexico

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

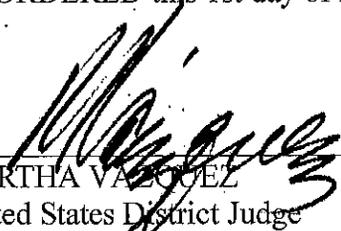
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SO ORDERED this 1st day of August, 2011.



MARTHA VAZQUEZ
United States District Judge