



4. Defendant State of Alabama is charged with the responsibility of complying with UOCAVA, and ensuring that validly-requested absentee ballots are transmitted to UOCAVA voters in accordance with its terms. 42 U.S.C. § 1973ff-1.

5. Defendant Beth Chapman is sued in her official capacity as the Secretary of State of the State of Alabama. The Secretary of State is Alabama's chief election officer. Ala. Code § 17-1-3(a); *see* Ala. Code §§ 17-11-5, 17-11-40, 17-11-41, 17-11-50, 17-11-51 (designating rule-making authority and other UOCAVA implementation responsibilities to Secretary of State). The Secretary of State is, among other things, charged with receiving the results of Federal elections from the officials of each county and certifying the results. *See* Ala. Code §§ 17-12-9, 17-12-17, 17-12-21.

6. The principal office of the Secretary of State's Elections Division is in Montgomery, Alabama.

7. In 2009, Congress passed the MOVE Act, which amended UOCAVA to require that absent uniformed services voters and overseas voters shall be permitted "to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 42 U.S.C. § 1973ff-1(a)(1).

8. UOCAVA requires that states establish procedures for at least one method of electronic transmission of blank ballots to UOCAVA voters who request electronic transmission of their ballots. *See* 42 U.S.C. § 1973ff-1(f)(1).

9. UOCAVA requires that states transmit all validly-requested ballots to UOCAVA voters by mail or electronically, in accordance with the voter's designation, not later than 45 days before an election for Federal office when the request is received at least 45 days before the election, unless a hardship exemption waiver is obtained pursuant to Section 102(g) of

UOCAVA. *See* 42 U.S.C. §§ 1973ff-1(a)(8) & (g). The State of Alabama neither sought nor received a hardship exemption waiver under UOCAVA for any Federal election in 2012.

10. Alabama will hold a Federal primary election on March 13, 2012.

11. The 45th day before the March 13, 2012 Federal primary election was January 28, 2012.

12. Under Alabama law, ballots from UOCAVA voters must be postmarked the day before Election Day and received by 12:00 p.m. on Election Day to be counted in the election. *See* Ala. Code § 17-9-51. For the upcoming Federal primary election, this means UOCAVA ballots must be postmarked by March 12, 2012, and received by 12:00 p.m. on March 13, 2012 to be counted.

13. Under Alabama law, primary runoff elections are held on the sixth Tuesday following the primary election. Ala. Code § 17-13-3. Accordingly, in 2012, Alabama will hold a Federal primary run-off election, if necessary, on April 24, 2012.

14. Under Alabama law, the results of the Federal primary election must be certified by March 23, 2012, just 32 days before the scheduled April 24 primary runoff election. Ala. Code §§ 17-13-17, 17-12-15.

15. Under Alabama law, if a primary runoff election is held in 2012, UOCAVA ballots must be postmarked by April 24, 2012 and received by 12:00 p.m. on May 1, 2012 to be counted. Ala. Code § 17-11-18.

16. Despite UOCAVA's 45-day advance ballot transmission requirement for all Federal elections, Alabama law provides less than 45 days between the Federal primary and primary runoff elections.

17. Upon information and belief, Alabama did not provide eligible UOCAVA voters a ballot that could be voted in a Federal primary runoff election, if one is necessary, when it transmitted UOCAVA ballots for the March 13, 2012 Federal primary election, or subsequently.

18. Alabama's administration of Federal primary runoff elections does not comply with UOCAVA's 45-day advance ballot transmission requirement.

19. Under UOCAVA, states must "establish a written plan that provides absentee ballots are made available to absent uniformed services voters and overseas voters in [a] manner that gives them sufficient time to vote in the runoff election." 42 U.S.C. § 1973ff-1(a)(9).

20. The United States has repeatedly sought to engage the State in discussions about its UOCAVA compliance in the time leading to the 2012 Federal elections.

21. By letter dated November 4, 2011, the United States contacted the Secretary of State requesting the opportunity to discuss with state election officials the State's plans and preparation for UOCAVA compliance during the 2012 Federal elections. Letter from T. Christian Herren, Jr., Chief, Voting Section, U.S. Dep't of Justice, to Beth Chapman, Ala. Sec'y of State (Nov. 4, 2011), attached as Ex. A. The United States received no information in response to that letter.

22. On January 9, 2012, the United States followed up on its November 2011 letter, requesting by telephone to schedule a telephonic conference call with state election officials to inquire about the State's plans and preparation for UOCAVA compliance during the 2012 Federal elections. The State declined this second request.

23. As a result of the State's refusal to provide any information as to its UOCAVA compliance, beginning on February 6, 2012, the United States contacted several Alabama counties directly to inquire whether they timely transmitted validly-requested ballots to UOCAVA voters. County election officials in some counties refused to provide any information sought by the United States. In some cases, election officials stated that the Secretary of State

had advised them not to provide the Department of Justice with any information and told the United States to submit all information requests to the Secretary of State's office.

24. Some county officials, however, admitted that their UOCAVA ballots were transmitted to voters after January 28, 2012, the 45-day advance mailing deadline for the 2012 Federal primary election. Upon information and belief, some counties transmitted ballots more than 8 days after the January 28, 2012 deadline.

25. The Secretary of State has posted a "Notice to UOCAVA Voters" on her website that advises voters that "[t]he Secretary of State has received information indicating that transmission of some UOCAVA ballots for the March 13, 2012 primary election has been delayed." *See* Ala. Sec'y of State, Notice to UOCAVA Voters, <http://www.sos.state.al.us/Elections/Default.aspx> (last visited February 24, 2012), attached as Ex. B.

26. Due to Defendants' failure to ensure the timely transmission of all UOCAVA ballots, on February 7, 2012, the Secretary of State adopted an emergency rule, Ala. Emergency Admin. Rule Ch. 820-2-8-.10-.10ER, which extended the ballot receipt deadline for UOCAVA ballots for the March 13 primary election by eight days, to March 21, 2012, to give UOCAVA voters more time to receive, mark, and return their ballots.

27. On February 15, 2012, the United States transmitted to the State by electronic mail, telefacsimile, and first class mail, a letter reiterating the previous requests for information about the State's UOCAVA compliance and, in particular, requesting information about the circumstances leading to the Notice to UOCAVA Voters published by the Secretary of State. Letter from T. Russell Nobile, Trial Attorney, Voting Section, U.S. Dep't of Justice, to Winfield Sinclair, Ala. Assistant Attorney General (Feb. 15, 2012), attached as Ex. C. The letter also

requested a copy of the State's written plan for providing UOCAVA voters with ballots for runoff elections, as required by UOCAVA. 42 U.S.C. § 1973ff-1(a)(9).

28. On February 21, 2012, the Secretary of State's chief legal advisor responded to the United States' February 15, 2012 letter on behalf of the Secretary of State. The letter contained the admission that "the Secretary has received reports that not all Alabama counties have been able to transmit UOCAVA absentee ballots by the 45<sup>th</sup> day before the March 13, 2012 Primary Election." Letter from Jean Brown, Chief Legal Advisor to Ala. Sec'y of State, to T. Russell Nobile, Trial Attorney, Voting Section, U.S. Dep't of Justice (Feb. 21, 2012), attached as Ex. D [hereinafter "Brown Letter"].

29. Despite this admission, the Secretary of State refused to provide any other information concerning the State's late transmission of UOCAVA ballots. *Id.* at 2.

30. Defendants' failure to ensure that election officials in Alabama transmitted timely-requested absentee ballots to all qualified UOCAVA voters by mail or electronically, in accordance with the voter's designation, not later than 45 days in advance of the March 13, 2012 Federal primary election violates Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A). This failure will deprive UOCAVA voters of the full opportunity to vote in the March 13, 2012 Federal primary election, as guaranteed by UOCAVA.

31. Defendants similarly failed to ensure absentee ballots were transmitted by mail or electronically to UOCAVA voters 45 days in advance of the November 2, 2010, Federal general election.

32. Accordingly, in each of the two Federal elections held since UOCAVA was amended by the MOVE Act to include a 45-day advance ballot transmission requirement, Defendants failed to ensure that all qualified overseas and military voters who had made timely requests for

absentee ballots in fact had their ballots transmitted by that deadline. *See* 42 U.S.C. § 1973ff-1(a)(8)(A).

33. The Secretary of State's February 21, 2012 response attached a copy of Alabama Emergency Administrative Rule Ch. 820-2-8-.11-.11ER. This rule is entitled "Second Primary Election Written Plan Pursuant to 42 U.S.C. § 1973ff-1(a)(9)," and was adopted by the Secretary of State on February 21, 2012, the same date the State responded to the United States' February 15, 2012 letter. *See* Brown Letter, attached as Ex. D.

34. Alabama Emergency Admin. Rule Ch. 820-2-8-.11-.11ER does not provide any new balloting procedures or modifications to the existing electoral calendar deadlines that preclude Alabama from complying with UOCAVA's 45-day advance ballot transmission requirement for the April 24, 2012 Federal primary runoff election, or for any subsequent Federal primary runoff election.

35. Defendants' failure to promulgate a written plan that ensures that UOCAVA ballots will be made available to Alabama's UOCAVA voters in a manner that provides sufficient time for them to vote in runoff elections violates Section 102(a)(9) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(9).

36. Accordingly, an order of this Court is necessary to require Defendants to take corrective action to protect rights granted by UOCAVA and to ensure that Alabama's affected military and overseas voters have sufficient time to receive, mark, and return their ballots in time to have them counted for the March 13, 2012 Federal primary election, and in all subsequent elections for Federal office, including the April 24, 2012 Federal primary runoff election.

WHEREFORE, the United States asks this Court to hear this action pursuant to 42 U.S.C. §1973ff-4 and 28 U.S.C. §§ 1345 & 2201, and:

(1) Issue a declaratory judgment under 28 U.S.C. § 2201 that the Defendants violated Sections 102(a)(8)(A) and 102(a)(9) of UOCAVA, 42 U.S.C. §§ 1973ff-1(a)(8)(A) and (a)(9), by failing to ensure that absentee ballots were transmitted to UOCAVA voters by January 28, 2012 for the March 13, 2012 Federal primary election, and by failing to provide for transmittal of absentee ballots to UOCAVA voters at least 45 days before primary runoff elections for Federal office when they are held; and

(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 UOCAVA voters shall have sufficient time to receive, mark, and submit their ballots in time to have them counted in the March 13, 2012 primary election for Federal office and the scheduled April 24, 2012 Federal primary runoff election, if one is required;

(b) To take such steps as are necessary to afford affected UOCAVA voters who are eligible to participate in the March 13, 2012 primary election for Federal office, and the April 24 primary runoff election for Federal office, if one is required, a reasonable opportunity to learn of this Court's order;

(c) To report to the United States and the Court concerning the transmission, receipt and counting of UOCAVA ballots, and related notice procedures, for the March 13, 2012 primary election for Federal office pursuant to this Court's order within 45 days after the primary election; and within 45 days after the scheduled April 24, 2012 Federal primary runoff election, if one is required; and

(d) To take such other steps as are necessary to assure that the State conducts all of its future Federal elections in full compliance with UOCAVA, including requiring



Defendants to provide pre- and post-election reports to the United States as to its UOCAVA compliance efforts for future Federal elections.

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.

Date: February 24, 2012

GEORGE L. BECK, JR.  
United States Attorney  
Middle District of Alabama



STEPHEN M. DOYLE  
Assistant United States Attorney  
131 Clayton Street  
Montgomery, AL 36104  
Phone: (334) 223-7280  
Fax: (334) 223-7418

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division



T. CHRISTIAN HERREN JR.  
RICHARD DELLHEIM  
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RISA BERKOWER  
Attorneys, Voting Section  
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U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
NWB - 7254  
Washington, D.C. 20530  
Telephone: (202) 307-1190  
Facsimile: (202) 307-3961  
[risa.berkower@usdoj.gov](mailto:risa.berkower@usdoj.gov)

# EXHIBIT A



U.S. Department of Justice  
Civil Rights Division

*Voting Section - NWB  
950 Pennsylvania Ave, NW  
Washington, DC 20530*

November 4, 2011

The Honorable Beth Chapman  
Secretary of State  
P.O. Box 5616  
Montgomery, Alabama 36103

Dear Secretary Chapman:

We write to you as the chief elections official for the State of Alabama regarding the state's plans for compliance in 2012 with 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, 123 Stat. 2190 (2009) ("MOVE Act").

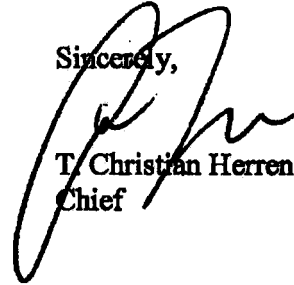
As you know, most of the MOVE Act's requirements, which expanded the protections of military and overseas citizens' right to vote in federal elections, went into effect for the November 2, 2010 general election. On April 7, 2010, we wrote you to request information on your state's plans for MOVE Act compliance in the 2010 Federal general election. During the months leading up to the general election, we communicated with your office concerning the state's procedures for implementing these new requirements, including the transmission of the absentee ballots in accordance with the Act's requirements.

The MOVE Act must be fully implemented for the 2012 Federal election cycle. Among several requirements, states must ensure that election officials transmit absentee ballots to eligible military and overseas voters no later than the 45<sup>th</sup> day before the election, including for the upcoming Federal primary elections and presidential primary elections. Accordingly, we expect your compliance plans have begun or should be under way soon. As a reminder, when the 45<sup>th</sup> day before a federal election falls on a Saturday, as it typically does, then the ballots must be transmitted by no later than that 45<sup>th</sup> day.

As part of our nationwide effort to enforce UOCAVA, we are continuing the process of assessing the actions states have or will be taking to ensure compliance in 2012. To that end, we would appreciate an opportunity to discuss in a telephone conference with the relevant state officials your state's plans and preparations for UOCAVA compliance in next year's Federal elections and any recent MOVE Act related changes your state has adopted. An attorney from our office will contact your office in the near future to schedule a telephone conference.

We greatly appreciate your cooperation in our continuing efforts to ensure that military and overseas voters are afforded the voting opportunities guaranteed under UOCAVA. We know you share our commitment to full compliance with UOCAVA in the upcoming election cycle and look forward to working with you to achieve that goal.

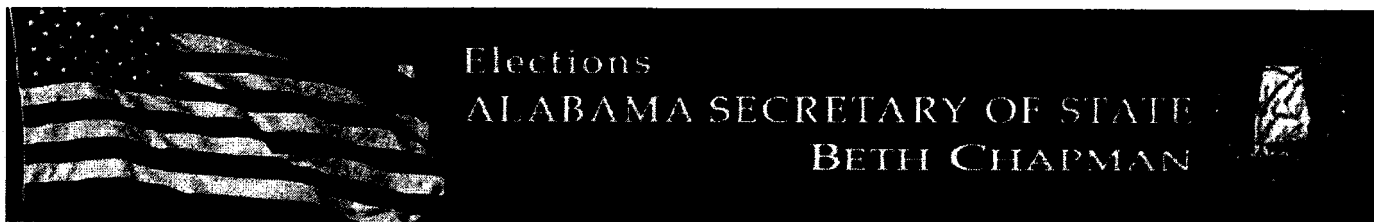
Sincerely,

A handwritten signature in black ink, appearing to read 'T. Herren', written over the typed name.

T. Christian Herren, Jr.  
Chief

cc: Ms. Janice McDonald, Elections Director

# EXHIBIT B



- Election Information
- Live Election Results
- Voter Registration
- Absentee Voting
- Military & Overseas Voting
- Check Your Provisional Ballot Status
- HAVA
- Citizen Resources
- Candidate Resources
- PAC Resources
- Election Tools
- Fair Campaign Practices Act
- Download Forms
- Campaign Finance Records



Home Elections

## Elections

### **NOTICE TO UOCAVA VOTERS**

The Secretary of State has received information indicating that transmission of some UOCAVA ballots for the March 13, 2012 primary election has been delayed. Your ballot may be one of these. **As a remedial action, the Secretary of State has extended the statewide deadline for receiving all UOCAVA ballots by eight (8) days to March 21, 2012, to ensure that all military and overseas voters have a full and fair opportunity to have their votes counted. Although the deadline has been extended, you are urged to return your voted ballot to your county absentee election manager as soon as possible to ensure its timely receipt. State law now allows UOCAVA ballots to be returned by U.S. mail, hand delivery, or commercial ground or air carrier.**

Welcome to the Alabama Secretary of State's Elections Division. From here, you can explore the office's information on election procedures, election returns, HAVA, and voter registration. Please use the menu to the left to navigate the pages within this section.

### Elections Division

Voice: 334-242-7210  
 Toll Free: 1-800-274-8683  
 Fax: 334-242-2444

**Physical Address**  
 600 Dexter Ave, Suite E-208  
 Montgomery, AL 36130

**Mailing Address**  
 PO Box 5616  
 Montgomery, AL 36103-5616

P.O. Box 5616  
 Montgomery, AL 36103-5616

Alabama Directory | Media | Online Services | Alabama.gov  
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Phone: (334) 242-7200  
 Fax: (334) 242-4993

# EXHIBIT C





U.S. Department of Justice  
Civil Rights Division

Voting Section - NWB  
950 Pennsylvania Ave, NW  
Washington, DC 20530

February 15, 2012

**VIA ELECTRONIC AND FIRST-CLASS MAIL**

Winfield Sinclair  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 300152  
Montgomery, AL 36130-0152

Dear Mr. Sinclair:

This letter follows our November 4, 2011, letter to Secretary of State Chapman regarding Alabama's plans to ensure compliance with 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, 123 Stat. 2190 (2009), during the 2012 Federal elections, including primaries and runoffs, if necessary. See Letter from the Department of Justice to Alabama Secretary of State (Nov. 4, 2011), attached. In that letter, we requested to discuss these vital matters by telephone with appropriate State officials.

On January 9, 2012, we spoke with you by telephone to schedule this conference. During that call, you stated that Alabama was fully compliant with UOCAVA, and declined our request to hold a telephone conference or otherwise provide the Department with any further information about the State's UOCAVA compliance.

Recent events, however, raise questions as to Alabama's compliance with UOCAVA for the Federal primary election on March 13, 2012. In particular, the Secretary of State's recent Notice to UOCAVA Voters indicates that Alabama may not have timely transmitted UOCAVA ballots for this election. See Alabama Secretary of State, Elections Division Homepage, <http://www.sos.state.al.us/Elections/Default.aspx> (last visited Feb. 13, 2012) (noting that "[t]he Secretary of State has received information indicating that transmission of some UOCAVA ballots for the March 13, 2012 [Federal] primary election has been delayed" and that, based on this information, the Secretary of State has extended to March 21, 2012 the statewide deadline for receiving all UOCAVA ballots).<sup>1</sup> This notice raises serious concerns.

<sup>1</sup> On January 19, 2012, we received the State's request for expedited review, pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, of emergency regulations and forms for the absentee election process for the 2012 election cycle and future election cycles relating to absentee voters and voting. We received additional information from the State on February 8, 2012. That submission is being considered on an expedited basis in accordance with procedures governing Section 5 and separately from this UOCAVA inquiry.

Because Alabama's Federal primary election is fast approaching, and pursuant to 42 U.S.C. 1973ff-4 & 1974b, we respectfully request the following information important to ensuring that UOCAVA voters have a full opportunity to participate in that election: (1) the names of Alabama counties that did not meet the January 28, 2012 UOCAVA ballot transmission deadline for the March 13, 2012 primary election and the reasons for such delays, including the number of ballots affected in each county and the length of the delay at issue; (2) the facts underlying Secretary Chapman's decision to extend the UOCAVA ballot receipt deadline for the March 14, 2012 primary and to publish the recent Notice to UOCAVA Voters; (3) all other steps the State has taken, or plans to take, to remediate the effects of the late transmissions of ballots to UOCAVA voters; (4) all steps the State will take to ensure UOCAVA compliance for any Federal primary runoff election that may occur on April 24, 2012; and (5) a copy of the State's written plan for UOCAVA compliance with respect to the April 24, 2012 Federal primary runoff, as required by 42 U.S.C. 1973ff-1(a)(9). Please provide the information requested no later than Friday, February 17, 2012, by facsimile to my attention at (202) 307-3961 or by email at [T.Russell.Nobile@usdoj.gov](mailto:T.Russell.Nobile@usdoj.gov). If you have any questions, please call me at (202) 307-1190.

We greatly appreciate your cooperation in our efforts to ensure that military and overseas voters are afforded all voting opportunities guaranteed under UOCAVA.

Sincerely,



T. Russell Nobile  
Trial Attorney

Enclosures

# EXHIBIT D

ALABAMA STATE CAPITOL  
600 DEXTER AVENUE  
SUITE S-105  
MONTGOMERY, AL 36130



(334) 242-7200  
FAX (334) 242-4993

WWW.SS.ALABAMA.GOV

**BETH CHAPMAN**  
*SECRETARY OF STATE*

**FACSIMILE TRANSMITTAL COVER SHEET**

To: T. Russell Nobile, Trial Attorney

From: Jean Brown

Re: Your letter of February 15, 2012

Date: February 21, 2012

Total Pages, including cover page: 6

Fax No. 202.307.3961

THIS FACSIMILE CONTAINS INFORMATION OF A LEGAL NATURE THAT MAY BE PROTECTED AS CONFIDENTIAL AND PRIVILEGED BY THE ATTORNEY-CLIENT PRIVILEGE. THE INFORMATION IS INTENDED STRICTLY FOR THE USE OF THE INDIVIDUAL OR ENTITY SHOWN AS THE ADDRESSEE ABOVE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, OR DISTRIBUTION OF THE CONTENTS IS PROHIBITED. PLEASE NOTIFY THE SENDER IMMEDIATELY UPON RECEIPT IF YOU HAVE RECEIVED THIS TRANSMISSION IN ERROR.

ALABAMA STATE CAPITOL  
600 DEXTER AVENUE  
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MONTGOMERY, AL 36130



(334) 242-7200  
FAX (334) 242-4993

WWW: OS.ALABAMA.GOV

**BETH CHAPMAN**  
*SECRETARY OF STATE*

**Sent by Facsimile Transmission and U.S. Mail**

February 21, 2012

Mr. T. Russell Nobile  
Trial Attorney  
U.S. Department of Justice Civil Rights Division  
Voting Section - NWB  
950 Pennsylvania Avenue  
Washington, DC 20530

Dear Mr. Nobile:

Assistant Attorney General Winfield Sinclair has forwarded your letter to him dated February 15, 2012 to me with a request that I respond thereto.

Since she became Secretary of State, Mrs. Chapman has made military and overseas voting a priority of this office. Actions that she has taken to improve military access to the ballot box have included the establishment of a Military and Overseas Voting Task Force (which she chairs), establishment of a website (one of the first) devoted to providing military access to voting information, and testifying before Congress, as well as working closely with the Overseas Vote Foundation, the Federal Voting Assistance Program, and the Pew Charitable Trusts.

In the 2010 General Election, Secretary Chapman received information that in a number of counties UOCAVA ballots had been delayed in transmission. The Secretary took corrective action by, based upon the inherent authority of her office, extending the deadline for the receipt and processing of UOCAVA ballots by Absentee Elections Managers statewide. This included issuing a press release and posting a notice on the Secretary's website. Notwithstanding her efforts, her office was inundated with demands by the Department of Justice (transmitted via Mr. Sinclair) for details and calls for additional action.

Since the 2010 General Election, the Secretary spearheaded legislation changing absentee ballot requirements in order to allow the same absentee witnessing and transmission requirements for Federal offices to be used by UOCAVA voters for state offices as well. Thus, military and overseas voters will no longer have to use one set of witnessing and transmission requirements for Federal offices and another for state offices. In addition, Act No. 2011-619 authorized additional methods by which a UOCAVA voter can return absentee ballots. I think that the Department will agree that these measures will improve military and overseas voter access to the Alabama ballot box.

Regrettably, the Secretary has received reports that not all Alabama counties have been able to transmit UOCAVA absentee ballots by the 45<sup>th</sup> day before the March 13, 2012 Primary Election. Consistent with the procedures utilized in the 2010 General Election, the Secretary has extended the receipt and processing time for voted ballots by eight days<sup>3</sup> to address the reported problem. The Secretary will monitor the progress and take further corrective action if she deems it necessary and appropriate.

You have requested Mr. Sinclair to provide you the names of the counties involved, the length of the delays for each county, the number of voters affected, the reasons for the delays, the facts underlying the Secretary's decision to extend the deadline, and the remedial steps. Any information specific to this request was obtained by attorneys in anticipation of litigation and is work product from this office. To the extent that Mr. Sinclair was furnished such information, it constitutes attorney-client information. In the 2010 General Election, the furnishing of this type of information proved to be a significant distraction for this office as well as the Absentee Election Managers and individual voters that we contacted in an effort to expedite transmission of ballots.

You have also requested "(4) all steps the State will take to ensure UOCAVA compliance for any Federal primary runoff election that may occur on April 24, 2012; and (5) a copy of the State's written plan for UOCAVA compliance with respect to the April 24, 2012 Federal primary runoff, as required by 42 U.S.C. §1973ff-1(a)(9)." Enclosed please find a copy of Emergency Rule 820-2-8-11-11 LER. Alabama's primary runoff election period is 42 days after the initial primary. At the time that period was precleared, there were stated concerns that extending that time period to 42 days increased candidate spending. At present, Ala.Code §17-11-18 extends the time for receiving voted UOCAVA absentee ballots in a runoff election to noon the seventh day after the primary runoff election (which gives UOCAVA absentee voters at least 45 days from the transmission of the absentee ballot to its being processed and counted). In addition, since the number of offices in the runoff election will certainly be limited, the technical problems related to printing and transmitting ballots would be much reduced. The Secretary will monitor any runoff election to determine if any UOCAVA problem occurs and take appropriate action if necessary.

Sincerely,



Jean Brown  
Chief Legal Advisor

Enclosure

<sup>3</sup> Act No. 2011-619 also confirmed the Secretary's authority to take this action.

APA4  
07/04

**CERTIFICATION OF EMERGENCY RULES  
FILED WITH LEGISLATIVE REFERENCE SERVICE  
JERRY L. BASSETT, DIRECTOR**

Pursuant to Code of Alabama 1975, §§41-22-5(b) and 41-22-6(c)(2)a. and b.

I certify that the attached emergency new rule is a correct copy as promulgated and adopted on the 21<sup>st</sup> day of February, 2012.

AGENCY NAME: Secretary of State

RULE NO. AND TITLE: 820-2-8-11-11ER Second Primary Election Written Plan Pursuant to 42 U.S.C. 1973ff-1(a)(9)

EFFECTIVE DATE OF RULE: February 21, 2012

EXPIRATION DATE (if less than 120 days): Not applicable

NATURE OF EMERGENCY: The emergency rule is required to comply with a Federal statute which requires adoption of the rule upon fewer than 35 days notice.

STATUTORY AUTHORITY: Code of Ala. 1975, §§17-1-3(a), 17-11-4, 17-11-5(d), UO WAVA; MOVE Act; Act 2011-619.

SUBJECT OF RULE TO BE ADOPTED ON PERMANENT BASIS  YES  NO


NAME, ADDRESS, AND TELEPHONE NUMBER OF PERSON TO CONTACT FOR COPY OF RULE:

Jean Brown, Chief Legal Advisor  
State Capitol, Room E-201  
334-242-7202

**REC'D & FILED**

FEB 21 2012

LEGISLATIVE REFERENCE SERVICE

  
Signature of officer authorized to promulgate and adopt rules and regulations or his or her deputy

FILING DATE  
(For APA Use Only)

OFFICE OF THE SECRETARY OF STATE  
ADMINISTRATIVE CODE

CHAPTER 820-2-8ER  
PROCEDURES FOR IMPLEMENTING  
THE MILITARY AND OVERSEAS VOTER EMPOWERMENT ACT  
AND  
ACT OF ALABAMA 2011-619

TABLE OF CONTENTS

820-2-8-.11-.11ER Primary Runoff Election Written Plan  
pursuant to 42 U.S.C. 1973ff-1(a) (9)

820-2-8-.11-.11ER Purpose. The purpose of this rule is to provide a written plan for primary runoff elections pursuant to 42 U.S.C. 1973ff-1(a) (9). The provisions of this rule are consistent with current voting practices and procedures used in this state and do not change any of those practices and procedures.

Applicability. This rule applies to absentee balloting in the April 24, 2012, primary runoff election for Federal, state and county offices and all subsequent primary runoff elections for individuals eligible to vote by absentee ballot pursuant to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

Certification of Federal and State Candidates. The Secretary of State shall certify the names of opposed candidates for Federal and state offices in the primary runoff election to the Judge of Probate as soon as practicable after the state party chairpersons certify the primary runoff candidates to the Secretary of State.

Printing of Absentee Ballots. Pursuant to Sections 17-6-47 and 17-11-12, Code of Alabama, 1975, the Judge of Probate in each county shall prepare the absentee ballots for UOCAVA voters participating in a primary runoff election. Due to the primary runoff election falling on the 42<sup>nd</sup> day after the primary election, the Judge of Probate shall deliver the absentee ballots to the absentee election manager as soon as practicable after the primary election.

Author: Edward Packard; Jean Brown



**Statutory Authority:** UOCAVA; MOVE Act; Act of Alabama  
2011-619.  
**History:** New Rule. Filed February 21, 2012; Effective  
February 21, 2012.