

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, et al.,

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

MEXICAN AMERICAN LEGISLATIVE
CAUCUS, TEXAS HOUSE OF
REPRESENTATIVES (MALC),

Plaintiffs,

v.

STATE OF TEXAS, et al.,

Defendants.

TEXAS LATINO REDISTRICTING TAS
FORCE, et al.,

Plaintiffs,

v.

RICK PERRY,

Defendant.

MARAGARITA V. QUESADA, et al.,

Plaintiffs,

v.

RICK PERRY, et al.,

§
§ CIVIL ACTION NO.
§ SA-11-CA-360-OLG-JES-XR
§ [Lead case]
§
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§
§

§
§ CIVIL ACTION NO.
§ SA-11-CA-361-OLG-JES-XR
§ [Consolidated case]
§
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§
§

§
§ CIVIL ACTION NO.
§ SA-11-CA-490-OLG-JES-XR
§ [Consolidated case]
§
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§
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§
§ CIVIL ACTION NO.
§ SA-11-CA-592-OLG-JES-XR
§ [Consolidated case]
§
§
§
§

§
§
§

Defendants.	§	
	§	
_____ JOHN T. MORRIS,	§	CIVIL ACTION NO.
	§	SA-11-CA-615-OLG-JES-XR
Plaintiff,	§	[Consolidated case]
	§	
v.	§	
	§	
STATE OF TEXAS, et al.,	§	
	§	
Defendants.	§	
_____ EDDIE RODRIGUEZ, et al.,	§	CIVIL ACTION NO.
	§	SA-11-CA-635-OLG-JES-XR
Plaintiffs,	§	[Consolidated case]
	§	
v.	§	
	§	
RICK PERRY, et al.,	§	
	§	
Defendants.	§	
_____	§	

STATEMENT OF INTEREST OF THE UNITED STATES UNDER THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517, which authorizes the Attorney General to attend to the interests of the United States in any pending suit.

Among other issues this Court will be considering in the next stage of these proceedings is Texas’ 2012 election schedule. The election calendar implicates important questions related to the state’s ability to comply with the requirements of the Uniformed and Overseas Citizens Absentee Voting Act of 1986, (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, (“MOVE Act”), Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009). The Attorney General is charged with the responsibility for the enforcement of UOCAVA, 42 U.S.C. § 1973ff -4, and has a strong

interest in ensuring that the voting rights of military and overseas voters are protected.

Accordingly, the United States respectfully requests that the Court factor the requirements of UOCAVA into its consideration of a 2012 election schedule and ensure that the schedule provides sufficient time for Texas to transmit ballots in accordance with UOCAVA's mandate.

BACKGROUND

On December 16, 2011, this Court entered a scheduling order for the 2012 elections, including setting a primary election for April 3, 2012. (Doc. 563). On December 21, 2011, the Texas Conference of Urban Counties, the County Judges and Commissioners Association of Texas, and the Texas Association of Counties filed a joint advisory memorandum requesting that this Court hear testimony from county election officials and issue any necessary further orders to enable the counties to comply with the Court's orders and other laws. (Doc. 565). This filing states that such orders may include "waiving strict compliance with the MOVE Act." On January 23, 2012, following the United States Supreme Court's remand of this case for further consideration, the Republican Party of Texas (RPT) filed a proposed order regarding the 2012 primary election schedule. (*Davis, et al. v. Perry, et al.*, Civil Action No. SA-11-CA-788-OLG-JES-XR, Doc. 108, 108-1). The RPT has proposed shortening the amount of time that military and overseas voters will have to participate in the election. These proposals conflict with UOCAVA's explicit requirement that states transmit ballots to the voters protected under the act at least 45 days before a federal election.

DISCUSSION

UOCAVA guarantees active duty members of the uniformed services (and their spouses and dependents) and United States citizens residing overseas the right "to vote by absentee ballot in general, special, primary, and runoff elections for federal office." 42 U.S.C. § 1973ff-1(a)(1).

UOCAVA reflects Congress' determination that military and overseas voter participation in federal elections is a vital national interest. *See Bush v. Hillsborough Cnty. Canvassing Bd.*, 123 F. Supp. 2d 1305, 1307 (N.D. Fla. 2000) (“[Voting is] a sacred element of the democratic process. For our citizens overseas, voting by absentee ballot may be the only practical means to exercise that right. For the members of our military, the absentee ballot is a cherished mechanism to voice their political opinion. . . . [It] should be provided no matter what their location.”). The MOVE Act reaffirmed Congress' commitment to ensuring that UOCAVA voters have sufficient time to receive, mark, and return their ballots in time to be counted. *See Military and Overseas Voter Empowerment (MOVE) Act of 2009*, 156 Cong. Rec. S4513, S4518 (daily ed. May 27, 2010). To give these voters adequate time to vote, the MOVE Act amended UOCAVA to require that states transmit validly requested ballots to UOCAVA voters at least 45 days before an election for federal office when the request is received at least 45 days before the election, unless a hardship exemption is obtained pursuant to the act.¹ 42 U.S.C. § 1973ff-1(a)(8) (“Each state shall . . . transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter . . . not later than 45 days before the election.”); (“the purpose [of the 45-day requirement] is to allow absent uniformed services voters and overseas voters enough time to vote”); *see* 156 Cong. Rec. at S4518 (discussing development of 45-day advance transmission requirement based upon evidence before Congress).

¹ Section 102(g) of UOCAVA permits a state in certain circumstances to seek a hardship exemption from the 45-day requirement from the Presidential designee, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g); Exec. Order No. 12,642, 53 Fed. Reg. 21,975 (June 8, 1988). However, where, as in this case, a hardship can be avoided by the Court setting an election schedule that accords with the 45-day requirement, the hardship exemption provision should not be viewed as a safe harbor for a schedule that fails to comply with the 45-day requirement.

We urge the Court to reject proposals to the election calendar that will impede compliance with UOCAVA. Shortening the 45-day timeline undermines the purpose of the MOVE Act and presents the real possibility of disenfranchising military and overseas voters.² We note that the United States does not advocate for any particular election date, as long as the schedule adopted enables Texas to transmit ballots in compliance with UOCAVA.

CONCLUSION

Thus, the United States respectfully requests that this Court account for the requirements of UOCAVA in its consideration of Texas' 2012 election schedule and order a schedule that would allow for ballots to be transmitted 45 days before the elections for federal office. We understand the State of Texas and its officials have important interests in being able to administer an orderly election following the resolution of the claims before the Court and recognize the timing challenges the Court and the parties now face. However, it is essential that Texas' UOCAVA voters, many of whom are deployed at home and abroad in service to our country, are provided the full opportunity to vote embodied in UOCAVA.

² To the extent any existing state laws or party regulations impede the ability to ensure ballots are sent by the UOCAVA deadline, they must give way. See *Hillsborough Cnty. Canvassing Bd.*, 123 F. Supp. 2d at 1314 (noting that any state law that conflicts with UOCAVA is preempted and invalid); *United States v. Cunningham*, No. 08-cv-709, 2009 WL 3350028, at *10 (E.D. Va. Oct. 15, 2009) (“[T]he Commonwealth of Virginia has an obligation under the Supremacy Clause to protect the federally-guaranteed civil right of UOCAVA voters to vote by absentee ballot in federal elections. To the extent that protecting that right conflicts with Virginia law, Virginia law must give way.”)

Date: January 27, 2012

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this filing was sent via the Court's electronic notification system and/or email to the following counsel of record on January 27, 2012 to:

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