

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
)	Case No. 3:08CV709
v.)	
)	
JEAN CUNNINGHAM, et al.,)	
)	
Defendants.)	
)	
_____)	

UNITED STATES' MOTION FOR ORDER GRANTING PERMANENT RELIEF

The United States hereby moves for an order for permanent relief, to enter a remedial plan for training, monitoring, and reporting procedures to ensure a complete remedy for the violation of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. § 1973ff et seq., found by this Court. In support, the United States states as follows:

1. This Court entered its liability order on October 15, 2009.
2. On October 28, 2009, President Obama signed into law significant amendments to UOCAVA as part of the National Defense Authorization Act for Fiscal Year 2010.
3. Beginning on November 4, 2009 and continuing on subsequent dates, the United States reported to this Court its intent to confer with the Defendants as to appropriate measures to be adopted to ensure UOCAVA compliance in future elections, consistent with the relief requested in its Complaint.

4. The United States forwarded a draft consent decree incorporating appropriate monitoring, reporting, and training procedures necessary to ensure future UOCAVA compliance on January 13, 2010.

5. The parties agreed to defer the discussions of that proposed consent decree until the end of the 2010 session of the Virginia General Assembly, wherein the Assembly was debating amendments to the Virginia Code to ensure conformity with UOCAVA as amended. That session ended on March 14, 2010.

6. On April 11, 2010, the Governor of Virginia signed into law amendments to the Virginia Code directly related to UOCAVA voting and that impact the scope of future relief at issue before this Court.

7. On May 3, 2010, the Federal Voting Assistance Program (“FVAP”) at the Department of Defense contacted the Defendants regarding a report FVAP has produced and intends to release. This report assesses the conformity of State laws to the legislative initiatives promoted by FVAP, which are based on a combination of new UOCAVA requirements and best practices recommendations promoted by FVAP. FVAP gave Virginia’s legislative initiatives an initial score of 76.5%, which it later increased to 85.5%. The FVAP report does not in any way relate to procedures for ensuring that Virginia and its localities in fact transmit ballots in compliance with UOCAVA.

8. Following their receipt of this information from FVAP, the Defendants stated that they are not amenable to entering into a consent decree regarding remedial procedures to ensure future compliance in this case.

9. The United States believes that the Defendants’ success in passing legislation that conforms to UOCAVA as amended is irrelevant to its request for future relief. At issue in this

litigation was the Defendants' failure to mail ballots to military and overseas voters in a timely manner, in violation of UOCAVA, not the degree to which Virginia election law conformed to UOCAVA's mandates.

10. Further, prior to the passage of this new legislation, Virginia law had required localities to have ballots available for absentee voting by the 45th day prior to November general elections, Va. Code Ann. § 24.2-612, yet the Defendants nonetheless failed to transmit these ballots to voters in a timely manner in the 2008 general election. Upon information and belief, the Defendants similarly failed to ensure that all absentee ballots were transmitted within that time frame during the November 2009 statewide general election, when 16 Virginia localities failed to transmit absentee ballots to overseas voters in a timely manner. Though this election was not an election for Federal office and thus did not implicate UOCAVA, it underscores the United States' concern with the Defendants' on-going ability to comply with ballot-mailing laws.

11. Because UOCAVA enforcement depends on timely and accurate information about the extent of compliance in each of the Commonwealth's political subdivisions, the United States believes it is essential for the Defendants to adopt procedures to monitor and provide confirmation of timely transmittal of ballots in accordance with UOCAVA. To be effective, these procedures should include producing to the United States copies of the certifications Virginia localities are required to provide to Defendant Virginia State Board of Elections "not later than five days after absentee ballots are made available..." as mandated by Virginia law as of July 1, 2010. Va. Code Ann. § 24.2-612.

13. To ensure that Virginia local election officials adequately carry out their duties in conformity with UOCAVA, Defendants must train their local election officials on all UOCAVA requirements, as well as the Commonwealth's new procedures that conform with UOCAVA.

14. The United States has conferred with the Defendants, who oppose the United States' motion.

WHEREFORE, the United States respectfully moves the Court to enter the attached Proposed Order, in addition to any other relief the Court deems appropriate.

Respectfully submitted,

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/s/ _____

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May 2010, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following counsel of record:

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By:

/s/

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