

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Civil Action No. 2:14-cv-27456
v.	)	
	)	
THE STATE OF WEST VIRGINIA; and	)	
NATALIE E. TENNANT, Secretary of	)	
State of the State of West Virginia, in her	)	
official capacity,	)	
	)	
Defendants.	)	
_____	)	

**UNITED STATES' MOTION FOR EMERGENCY  
SUPPLEMENTAL INJUNCTIVE RELIEF**

Plaintiff United States of America, pursuant to Rule 65 of the Federal Rules of Civil Procedure, respectfully moves for an order granting immediate injunctive relief against Defendants to enforce the rights of uniformed services and overseas voters to vote by absentee ballot in the State of West Virginia's November 4, 2014 Federal general election as guaranteed by the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). 52 U.S.C. § 20301 *et seq.*

On October 31, 2014, the United States filed a Complaint alleging violations of UOCAVA arising from Defendants' failure to timely transmit final UOCAVA ballots prior to the November 4, 2014 Federal general election. On November 3, 2014, this Court entered a consent decree under which the Defendants are required to take certain actions as a partial remedy for the stipulated violation of UOCAVA, including: 1) extending the state law deadline, to November 17, 2014, for counting the votes for Federal offices contained on the corrected ballots, and on Federal Write In Absentee Ballots, returned by affected UOCAVA voters, provided they were

executed on or before November 4, 2014; 2) sending appropriate notice and instructions to affected UOCAVA voters; and 3) providing reports of actions taken pursuant to the consent decree. *See* Consent Decree, ECF No. 5.

On November 3, 2014, citing the West Virginia Supreme Court of Appeals' October 1 order requiring corrected ballots and its October 30 order denying the State's request to clarify the earlier order, the Defendants advised the United States that absent a federal court order, they will not agree to count votes for Federal office cast on the original UOCAVA ballots returned by affected voters, even if those ballots are the only ballots received from the voters.

Under the terms of the consent decree, the United States reserved the right to seek further relief from this Court requiring the State to count the original ballots, and the Court retained jurisdiction to consider such supplemental relief. As explained more fully in the accompanying memorandum, the factors for entry of the requested injunctive relief are met here. West Virginia's failure to implement this measure threatens to disenfranchise a number of the affected voters and thus prevents a complete remedy for the State's UOCAVA violation. To avoid irreparable harm to the affected military and overseas voters, entry of supplemental relief by this Court is necessary to ensure that all voters are provided the opportunity guaranteed by UOCAVA to receive, cast, and return their ballots in time to be counted for federal offices in the November 4, 2014 general election.

Accordingly, the United States hereby moves for emergency supplemental injunctive relief requiring the Defendants to take such steps as are necessary to ensure that election officials count votes for Federal office contained on all those original UOCAVA ballots that were transmitted to affected voters in State Delegate District 35 on or before September 20, 2014, that are returned by postal or express mail, provided that such ballots were executed on or before

November 4, 2014 and are received by November 17, 2014, or returned by email or facsimile by November 4, 2014, if that ballot is the only ballot returned by the UOCAVA voter by November 17, 2014 and is otherwise valid under State law. The basis for the United States' motion is set forth in the accompanying Memorandum. A Proposed Order also accompanies this filing.

Respectfully submitted,

Date: November 6, 2014

R. BOOTH GOODWIN II  
United States Attorney

VANITA GUPTA  
Acting Assistant Attorney General  
Civil Rights Division

By: /s/ Gary L. Call  
GARY L. CALL  
Assistant United States Attorney  
WV State Bar No. 589  
P.O. Box 1713  
Charleston, WV 25326  
Telephone: (304) 345-2200  
Facsimile: (304) 347-5440  
gary.call@usdoj.gov

/s/ Spencer R. Fisher  
T. CHRISTIAN HERREN, JR.  
SARABETH DONOVAN  
SPENCER R. FISHER  
Attorneys, Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530  
Telephone: (202) 305-0015  
Facsimile: (202) 307-3961  
spencer.fisher@usdoj.gov  
sarabeth.donovan@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on November 6, 2014, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants:

RICHARD R. HEATH, JR.  
Deputy Attorney General  
State Capitol Complex  
Bldg. 1, Room E-26  
Charleston, WV 25305  
Telephone: (304) 558-2021  
Facsimile: (304) 558-0140  
richie.r.heath@wvago.gov

MISHA TSEYTLIN  
Deputy Attorney General  
State Capitol Complex  
Bldg. 1, Room E-26  
Charleston, WV 25305  
Telephone: (304) 558-2021  
Facsimile: (304) 558-0140  
misha.tseytlin@wvago.gov

J. ZAK RITCHIE  
Assistant Attorney General  
State Capitol Complex  
Bldg. 1, Room E-26  
Charleston, WV 25305  
Telephone: (304) 558-2021  
Facsimile: (304) 558-0140  
zak.j.ritchie@wvago.gov

JENNIFER S. GREENLIEF  
Assistant Attorney General  
State Capitol Complex  
Bldg. 1, Room E-26  
Charleston, WV 25305  
Telephone: (304) 558-2021  
Facsimile: (304) 558-0140  
jennifer.s.greenlief@wvago.gov

/s/ Spencer R. Fisher  
Spencer R. Fisher