

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

**MIRNA MICHEL JABBOUR AND NATIONAL
DEFENSE COMMITTEE**

Plaintiffs,

V.

JOHN H. MERRILL, et al.,

Defendants.

CIVIL ACTION NO. 1:20-00034-JB-N

ORDER

This matter is before the Court *sua sponte* to address State Defendants’ Fifth Evidentiary Submission (“State’s Submission”). (Doc. 42). Based on filings by all parties, the Court understands that Alabama Governor Kay Ivey issued a proclamation on March 18, 2020 postponing the 2020 Alabama primary runoff election date to July 14, 2020. According to the State’s Submission, the Alabama Secretary of State has arranged for UOCAVA voters to receive traditional (non-ranked) ballots for the 2020 Alabama primary runoff election. The Secretary of State took that action on March 17, 2020.

The State's Submission includes a Declaration of the Director of Elections at the Alabama Secretary of State's office, Clay Helms. (Doc. 42-1). In paragraph 3. of his Declaration, Mr. Helms represents:

- On March 17, 2020, I emailed the Absentee Election Managers throughout the State with instructions that UOCAVA voters should be sent traditional ballots for the State's primary runoff election, even if they have already cast their ranked choice ballots in the federal primary election. If the UOCAVA voter casts his

traditional ballot for the State's primary runoff election, that vote will be counted rather than the choices earlier made on the ranked choice ballots (assuming the ballot is otherwise eligible for counting). If the UOCAVA voter does not cast his traditional ballot for the State's primary runoff election, then any ranked choice ballot received for that voter will be counted (assuming the ballot is otherwise eligible for counting). Specifically, I explained:

Second, please note the following procedures regarding UOCAVA voters:

- Whether they request to receive their ballot electronically or by mail, UOCAVA voters are to be issued the regular absentee ballot. Please do not use the special ballots that were provided to you.
- If the UOCAVA voter casts the regular absentee ballot in the Primary Runoff, then that ballot will be counted for the Primary Runoff, even if the UOCAVA voter cast a ranked choice ballot in the Primary Election.
- If the UOCAVA voter DOES NOT return the regular absentee ballot in the Primary Runoff and the voter cast a ranked choice ballot for Federal office(s) in the Primary Election, then the ranked-choice vote(s) cast on the ranked-choice ballot for Federal office(s) in the Primary Election will be counted in the Primary Runoff. This will be accomplished by counting the ballot for the Primary Runoff Federal candidate ranked highest by the UOCAVA voter on the ranked-choice ballot in each contest for a Federal office. You are able to pull either the affidavit or the overseas voting certificate (depending on how they returned the ballot) to locate the voters ranked-choice ballot from the Primary, if needed.

Based on the foregoing, the Court **ORDERS** the parties to file a Joint Statement, not later than March 30, 2020, informing the Court of their position(s) regarding whether the actions of the Governor and Secretary of State as aforesaid render Plaintiff's Motion for Preliminary Injunction and any other requested relief directed specifically to the 2020 Alabama primary runoff election moot.

DONE and ORDERED this 24th day of March, 2020.

/s/ JEFFREY U. BEAVERSTOCK
UNITED STATES DISTRICT JUDGE