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DOJ Gets Serious about Suing States that Disenfranchise the Brave Young Men and Women Who Are away from Home and Prepared To Lay Down their Lives for our Country

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7.0—Military voting rights

United States of America v. The State of Georgia, 952 F. Supp. 2d 1318 (N.D. Ga. 2012).³

United States of America v. The State of Alabama, 998 F. Supp. 2d 1283 (M.D. Ala. 2014).

For as long as military personnel have been permitted to vote at all (since World War II), many and in some cases most of them have been disenfranchised through no fault of their own. This is particularly a problem for military personnel serving in overseas combat zones or on Navy ships at sea. Even in the second decade of the 21st Century, it is not possible to deliver mail to or transmit mail from a ship or a forward operating base on a daily basis. Because of late primaries,⁴ ballot access lawsuits, and other problems, LEOs often do not have ballots printed and ready to be mailed until a few days before Election Day. Although the military voter may have applied for a ballot months in advance, there just is not enough time for the unmarked ballot to travel from the LEO to the voter and for the marked ballot to travel from the voter back to the LEO.

A federal statute called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)⁵ requires that each state “permit absent uniformed services voters⁶ and overseas voters⁷ to use

¹ We invite the reader’s attention to www.servicemembers-lawcenter.org. You will find almost 1,300 “Law Review” articles about military voting rights, reemployment rights, and other military-legal topics. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

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³ The citation means that you can find this case in Volume 952 of *Federal Supplement Second Series*, and the case starts on page 1318.

⁴ Until the results of the primary have been officially certified, the local election official (LEO) cannot *print* absentee ballots, much less mail them out.

⁵ UOCAVA is codified in title 52 of the United States Code, at sections 20301 through 20311 (52 U.S.C. 20301-20311).

⁶ Absent uniformed services voters are active members of the uniformed services (Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service commissioned corps, and National Oceanic & Atmospheric

absentee registration procedures and to vote by absentee ballot in general, special, primary, *and runoff elections* for federal office.”⁸ As amended in 2009, UOCAVA explicitly requires each state to transmit absentee ballots to UOCAVA voters (military and civilian) “not later than 45 days before the election.”⁹

Georgia has some unique election laws. In the general election, as well as the primary, the winning candidate needs a *majority*, which is defined as 50% plus one vote, to be elected. In other states, a *plurality* (the greatest number of votes, which may amount to less than 50%) is sufficient for election. In Georgia, if no candidate receives a majority, a runoff is held between the top two candidates. In most years, in Georgia, no runoff is required, but if the two major party candidates are closely matched and if there are one or more minor party or independent candidates with significant support it is possible that the candidate with the most votes will be under 50%.

The United States Department of Justice (DOJ) sued Georgia, arguing that the state violated UOCAVA in the runoff election (when required) because the runoff was held so soon after the November general election that compliance with the 45-day rule was impossible. Georgia argued that the 45-day rule did not apply to the federal runoff. United States District Court Judge Steve C. Jones firmly rejected that argument and ordered Georgia to spread out the time between the November general election and the runoff.

In 2014, Senator Saxby Chambliss (the incumbent U.S. Senator) has chosen not to run for reelection. David Perdue is the Republican candidate and Michelle Nunn is the Democratic candidate. They are closely matched, and there are some minor candidates in the mix. It is entirely possible that neither Perdue nor Nunn will reach the 50% threshold on November 4. If that is the case, there will be a runoff on Tuesday, January 6, 2015.¹⁰

Alabama (like several states, mostly in the South) requires a majority (as opposed to a plurality) to win a party nomination in the primary. If no candidate reaches the 50% threshold, the state conducts a runoff primary just 42 days after the initial primary. United States District Court Judge Myron H. Thompson held that this election schedule violates UOCAVA on its face and ordered Alabama to extend the time between the primary and the runoff primary.

In most years, no runoff is necessary in Alabama for federal offices (U.S. Senator and U.S. Representative), because an incumbent Senator or Representative seeking reelection normally does not have serious opposition from multiple challengers in his or her own party primary. The runoff scenario is most likely to occur when an incumbent Senator or Representative chooses not to seek reelection and three or more candidates vie for the nomination. When that next

Administration commissioned corps) and Merchant Marine and their voting-age family members who are absent from their place of residence (either within or outside the United States) because of such service.

⁷ Overseas voters are U.S. citizens who are outside the United States temporarily or permanently.

⁸ 52 U.S.C. 20302(a)(1) (emphasis supplied).

⁹ 52 U.S.C. 20302(a)(8)(A).

¹⁰ As it happened, the Republican candidate (Perdue) received more than 50% and avoided the need for a runoff.

happens in Alabama, the state will be required to hold the runoff more than 45 days (probably at least 52) after the initial primary, in order to ensure that overseas voters (military and civilian) will have sufficient time to receive, mark, and return their runoff ballots in time for those ballots to be counted.