

Ordering the Use of the Federal Write-In Absentee Ballot in Texas

United States v. Texas (Sam Sparks, W.D. Tex. 1:02-cv-195)

Eighteen days before a federal runoff primary election, the Justice Department sought a court order requiring a state to allow overseas voters to use the federal write-in absentee ballot, as provided by the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the district court granted the requested immediate relief three days later. After a little more than one year, state legislation provided for use of the federal write-in absentee ballot.

Subject: Absentee and early voting. *Topics:* Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); primary election; section 5 preclearance.

Eighteen days before the April 9, 2002, runoff primary election in Texas, the Justice Department filed a federal complaint in the Western District of Texas seeking an order that Texas allow overseas voters to use the federal write-in absentee ballot, as provided by the Uniformed and Overseas Citizens Absentee Voting Act of 1986, because the four-week interval between the first primary election and the runoff primary election did not allow enough time for absentee ballots to make the round trip for overseas voters.¹ With its complaint, the Justice Department filed a motion for a temporary restraining order and a preliminary injunction.²

On the day that the complaint was filed, Judge Sam Sparks set the case for hearing three days later, on Monday afternoon.³ He granted the requested immediate relief on March 25, the day of the hearing.⁴

As 2002 wore on, Judge Sparks stayed the case pending efforts to persuade the legislature to provide for the use by overseas voters of the federal write-in absentee ballot.⁵ On July 1, 2003, the defendant secretary of state reported that the governor signed legislation on June 20, and the change in Texas's election laws would be submitted to the Justice Department for preclearance pursuant to section 5 of the Voting Rights Act.⁶ On November 14, the secretary reported

1. Complaint, *United States v. Texas*, No. 1:02-cv-195 (W.D. Tex. Mar. 22, 2002), D.E. 1; see UOCAVA, Pub. L. No. 99-410, 100 Stat. 924, *as amended*, 52 U.S.C. §§ 20301–20311; 52 U.S.C. § 20303 (requiring the creation of a blank absentee ballot for use in a federal election when an overseas voter has not received the state's absentee ballot in time). See generally Robert Timothy Reagan, *Overseas Voting: The Uniformed and Overseas Citizens Absentee Voting Act* (Federal Judicial Center 2016).

2. Motion, *United States v. Texas*, No. 1:02-cv-195 (W.D. Tex. Mar. 22, 2002), D.E. 2.

3. Order, *id.* (Mar. 22, 2002), D.E. 3.

4. Order, *id.* (Mar. 25, 2002), D.E. 6.

5. Status Report, *id.* (Nov. 26, 2002), D.E. 15; Order, *id.* (Aug. 2, 2002), D.E. 14.

6. Status Report, *id.* (July 1, 2003), D.E. 23; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination).

that the legislation had been precleared on August 27.⁷ Judge Sparks signed a stipulated dismissal on February 9, 2004.⁸

7. Status Report, *United States v. Texas*, No. 1:02-cv-195 (W.D. Tex. Nov. 14, 2003), D.E. 25.

8. Order, *id.* (Feb. 9, 2004), D.E. 29.