

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

Hon. Guy Reschenthaler, a member of
the U.S. House of Representatives, et al.,

Civil No. 1:24-CV-01671-CCC

Plaintiffs,

v.

**Plaintiffs’ Reply Memorandum of
Law in Support of Motion for
Temporary Restraining Order or
Preliminary Injunction**

Al Schmidt, in his official capacity
as Secretary of the Commonwealth, et
al.,

Defendants.

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The Defendants and Intervenors argue unpersuasively that the motion for prospective declaratory or injunctive relief should be denied. *See, e.g.*, Intervenors Memo, at 26-30, R. Doc. 29, at 32-36. But, the Plaintiffs have met the requirements.

ARGUMENT

I. **The Plaintiffs have established a likelihood of success on the merits on the Supremacy Clause federal preemption claim.**

The Plaintiffs have established a likelihood of success on the merits on their Supremacy Clause federal preemption claim. The Supreme Court has held, “Because the power the Elections Clause confers is none other than the power to pre-empt, the reasonable assumption is that the statutory text accurately communicates the scope of Congress's pre-emptive intent.” *Arizona v. Inter Tribal Council of Arizona, Inc.*, 570 U.S. 1, 14–15 (2013).

Federal preemption applies. The federal law requires all states to “accept and process, with respect to any election for Federal office, any **otherwise valid** voter registration application and absentee ballot application...” [52 U.S.C. § 20302(a)(a)(2)] before triggering the privileges for UOCAVA eligible voters. (Emphasis added). To verify identity and eligibility and to determine if an application is otherwise valid, HAVA establishes the minimum standards. 52 U.S.C. § 21083(a)(5)(A)(i-iii)(verification of voter registration information). Applicants who seek to vote in a federal election must provide, at the time of registration, a valid driver’s license number. *Id.* If the individual has not been issued a driver’s license, they may use the last four digits of their social

security number. For applicants who have no DLN and who have not been issued a SSN, HAVA has a Special Rule that a State can assign them a unique identifying number and verify their identity and eligibility using other approved documents. *Id.* HAVA has a preemption clause for inconsistent state laws, violating minimum standards, 52 U.S.C. § 21084, which applies to 52 U.S.C. § 21083(a)(5)(A)(i-iii). In direct conflict with federal and state law, DOS has issued directives and guidance to election officials to exempt UOCAVA applicants entirely from any verification requirements under 52 U.S.C. § 21083(a)(5)(A)(i-iii). Without such verification of UOCAVA voters, Pennsylvania elections are subject to manipulation by foreign nations such as Iran.

Notably, when reviewing the parties' briefs on the merits, the parties seem to agree on some important, fundamental points:

1. "Congress passed... (UOCAVA), to ensure that active-duty military members, as well as other categories of U.S. citizens living overseas, are entitled to vote in elections for federal offices by absentee ballot. Under the definitions adopted by Congress, UOCAVA applies to "absent uniformed services voters" and "overseas voters." 52 U.S.C. § 20303." (R. Doc. 30, at 7).
2. Congress enacted HAVA "in the wake of the 2000 Presidential election... [which] created new mandatory procedures for the states..." (R. Doc. 30, at 6).
3. "Under HAVA, a state may not process a voter registration application unless it contains the applicant's driver's license number or the last four digits of the applicant's Social Security Number, unless the applicant has been issued neither. See 52 U.S.C. § 21083(a)(5)(A). This requirement applies to all voters, including overseas voters." (R. Doc. 30, at 7-8).

The divergence of statutory interpretation relates to what exemptions apply to UOCAVA applicants. The Defendants' position causes several specific legal questions to be left open for the Court to resolve

1. Are UOCAVA applicants exempt from the requirement to register before voting in a federal election?
Plaintiffs' Answer: No
2. Are UOCAVA applicants exempt from verification of voter registration application information including driver's license or SSN4 verification?
Plaintiffs' Answer: No
3. Are UOCAVA applicants exempt from state eligibility requirements for voter registration including residency?
Plaintiffs' Answer: No
4. Are UOCAVA applicants who provide an invalid DL or invalid SSN exempt from provisional registration status and exempt from procedures to correct the inaccurate information on their voter registration application?
Plaintiffs' Answer: No
5. Are UOCAVA applicants exempt from absentee ballot application requirements including qualified elector status?
Plaintiffs' Answer: No
6. Are UOCAVA applicants exempt from the requirement for registered voters who registered by mail and who vote by mail to include a copy of identification when they return their ballot?
Plaintiffs' Answer: Yes

Defendants' and Intervenors' position is that UOCAVA applicants are exempt from verification of identity and eligibility requirements based their interpretation of 52 U.S.C. § 21083(b)(3)(C)(i). Their statutory interpretation is flawed in several ways. First, if a federal exemption existed, that exemption would apply to all states. Second, if a

federal exemption existed, the EAC and the DOJ would not permit states to require information for which an exemption existed. Third, the 21083(b)(3)(C)(i) section is only applicable to qualified voters who registered by mail and who are **voting** by mail. Therefore, it cannot apply to the voter registration application process.

The divergence between the Plaintiffs' position and the Defendants'/Intervenors' position is whether UOCAVA applicants are exempt from voter registration, voter registration identification requirements, state eligibility requirements, and absentee ballot application requirements, or whether Pennsylvania state officials are failing to ensure compliance with UOCAVA and HAVA.

A. The Defendants and Intervenors make a fallacious legal argument because processing UOCAVA Federal Post Card Application involves three legally-required separate processes.

The Defendants' and Intervenors make a fallacious legal argument based on conflating the three legally-required separate processes for processing a Federal Post Card Application (FPCA). An FPCA is both a voter registration application and an absentee ballot application. They are two separate processes. When a UOCAVA eligible voter receives, votes and returns a ballot, that is "voting" which is a **third** process. Defendants have conflated these three processes to attempt to make an exemption that applies only to Process 3:

- 1 – Voter Registration Application
- 2 – Absentee Ballot Application
- 3 – Voting & Ballot Return

Process 1 is required under HAVA. There are mandatory federal and state requirements to ensure that only eligible citizens vote. The purpose of the registration process is to make a determination of eligibility as a condition of voting. The Defendants disrupt the registration process and violate the law in the following ways:

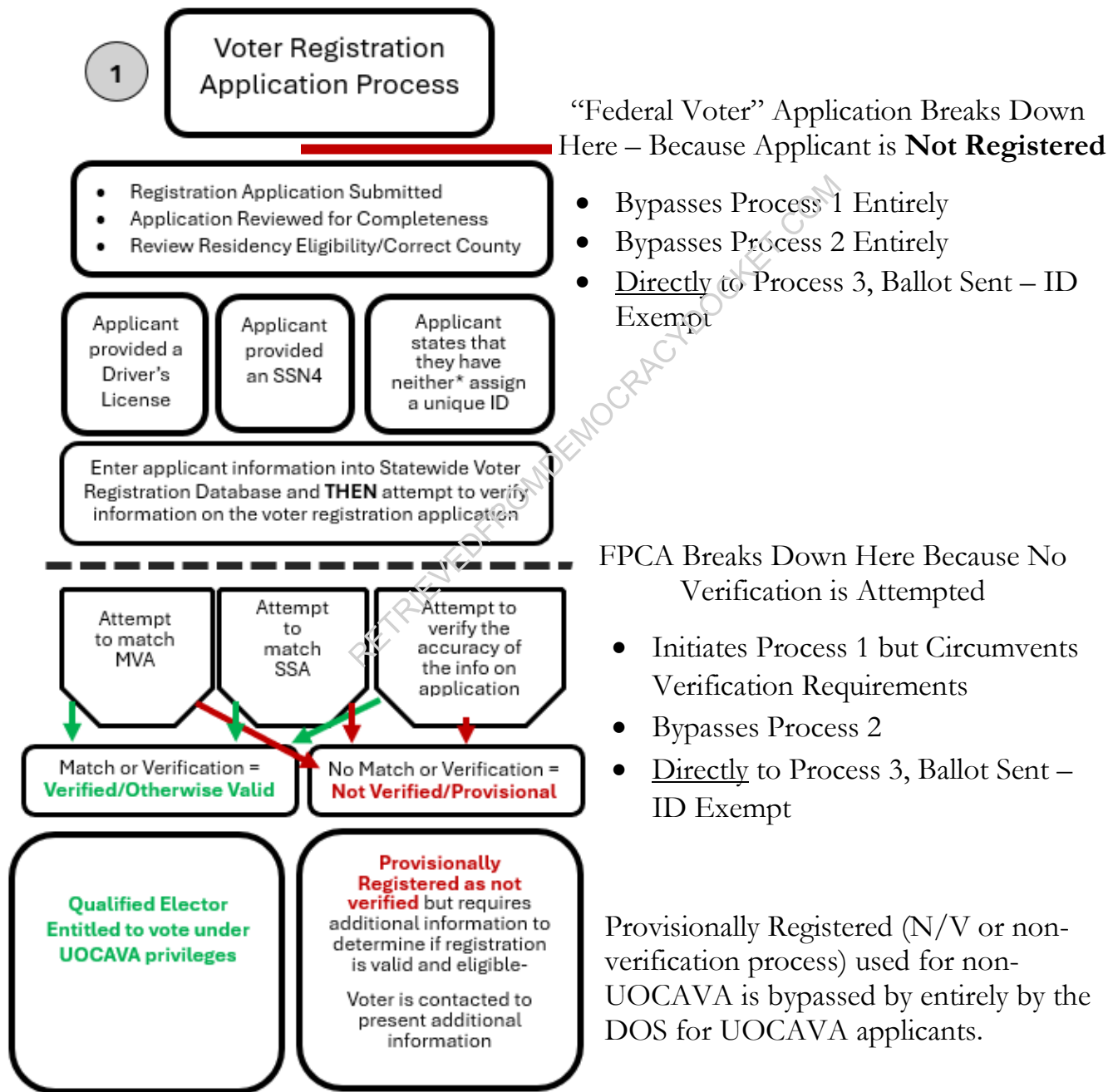


Figure 1: Excerpt showing the HAVA Required Voter Registration Application Verification Procedures (from Am. Eomp., Ex. L)

The three processes are reflected in a federal district court order in a Washington case. A federal district court in the State of Washington issued a preliminary injunction confirming HAVA requires voter registration information verification. *Washington Ass'n of Churches v. Reed*, 492 F.Supp.2d 1264 (W.D. Wash 2006). The district court issued a permanent injunctive order requiring, under HAVA that the state not count any ballot from an applicant who has not provided documentation to confirm his or her identity and eligibility sufficient for the government to complete the verification process:

(c)No [provisional] ballot cast pursuant to paragraph (1)(c) above shall be tabulated or regarded as containing valid votes for any office or measure until the Defendant receives information or the voter presents or submits documentation sufficient to register the voter as described in paragraph (1)(a) [driver license no. or social security number] or (1)(b) [alternate identification information] above.

Nielsen Decl., Ex. K. The same federal laws that apply in Washington apply in Pennsylvania.

B. Defendants are violating UOCAVA by not registering approximately half of all UOCAVA applicants in violation of federal law.

The Pennsylvania Department of State (DOS) has communicated to election officials, without citing any legal authority, to allow unregistered applicants identified as “federal voters” to receive a federal ballot and vote a federal ballot:

1. Without determining if the applicant is “otherwise eligible”
2. Without processing the voter registration application

3. Without registering the applicant
4. Without determining if the absentee ballot application is valid.

Defendants assert that “Plaintiffs may not like the fact that the Election Code exempts UOCAVA voters in this manner[,]” and assert that HAVA “specifically exempts UOCAVA-covered voters” from identification requirements as does 25 P.S. § 3146.8(i); 25 P.S. § 3146.2(j) and 25 P.S. 3146.5(c). (See Doc. 30, p. 18-20). However, Defendants’ decision not to register these federal-election-only voters at all means there is no compliance with UOCAVA or HAVA whatsoever because registration is required.

The Defendants’ misreading of federal and state law leads to an absurd situation. As individuals located **within** the state must confirm identity and eligibility in order to register to vote, but those who are applying to register from overseas (who indicate uncertain intent to return to the United States) are **not** required to register or to confirm identity and eligibility, but are emailed a ballot upon request and permitted to vote in a federal election.

In violation of federal law, Pennsylvania’s chief election official, through multiple directives and guidance, including the September 26, 2022 Voter ID Guidance, has instructed election officials that “federal voters” are “not registered to vote” but still can participate in voting in elections for federal offices. (R. Doc. 23, Ex. M)

The Commonwealth’s practice is an illegally structured election process which makes Pennsylvania’s elections vulnerable to ineligible votes by individuals who could

purport to be UOCAVA-eligible, receive a ballot by email, and then vote the ballot without providing identification at any step in the process.

Last week, as an example, Cambria County, PA officials announced that they had identified 21 fraudulent voter registration applications. During the mandatory verification process, the applicants' numbers provided did not match the motor vehicle database or the SSA database. This attempt to match and non-match notification from the DOS prompted the county to ask the district attorney to investigate. The 21 applications were all fraudulent and were rejected by the county. The DOS is preventing this mandatory election security measure of attempting to match application information for UOCAVA applicants. (source:<https://wjactv.com/news/local/cambria-county-investigates-21-fraudulent-voter-registration-requests-investigation-elections-pennsylvania-fraud-voting-flagged-democrats-republicans-libertarian-independents-da-officials->)

C. There is no federal exemption from verification of identity and eligibility for applicants who register to vote in federal elections—otherwise, other states doing the verification would be violating federal law.

If UOCAVA could be read to include a federal exemption to verification of identity and eligibility – nearly every other state would be violating UOCAVA by requiring applicants to provide verifiable identification prior to voting. If HAVA could be read to include a federal exemption for verification of identity and eligibility--- nearly every other state would be violating federal law by requiring verification of voter registration application information. The FCPA includes fields for applicants to provide

the HAVA required driver's license or social security number information. The FCPA also includes a field for state specific instructions and "additional information" that the applicant must provide. (R. Doc. 23, Exs. G, L). If federal law created an exemption from voter registration information verification requirements for UOCAVA voters, the FPCA would not include fields for identification.

It follows that - under current PA DOS guidance and practice, the only necessary field for overseas applicants uncertain of return to the United States would be a field for an email address – as Defendants are failing to confirm the identity or eligibility of these voters by exempting them from the voter registration process entirely.

For example, Georgia requires a matching of DLN or SSN4 and verification of voter registration application information for UOCAVA applicants. If the information on the application does not match or if information is missing, the UOCAVA applicant is provisionally registered. If the identification issue and provisional status are not resolved prior to the 45th day before Election Day, the applicant is sent a provisional ballot. (See R. Doc. 23, ¶¶ 149-152). By the Defendants' interpretation of UOCAVA and the HAVA exception, Georgia's (and Washington State's) practices violate federal law.

The U.S. Department of Defense, FVAP.gov website, U.S. Department of Justice and the U.S. Election Assistance Commission have all confirmed that UOCAVA applicants are not exempt from voter registration application information verification requirements. (See R. Doc. 23, ¶¶ 137 – 143).

D. The Defendants are unlawfully directing the bypass of federal voter registration information verification requirements and allowing unregistered applicants to receive and vote ballots in violation of federal law.

UOCAVA establishes special voting privileges reserved for members of the military, their family members, and other non-military U.S. citizens abroad. But UOCAVA requires states to **first** determine if a voter registration applicant is qualified to receive those voting privileges. The law requires states to use “registration **procedures**,” and to process applications that are determined to be valid.

UOCAVA, 52 U.S.C. § 20302(a)(1) and (2), provides:

Each State, shall –

- (1) permit absent uniformed services voters and overseas voters to use absentee **registration procedures** and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office;
- (2) accept and process, with respect to any election for Federal office, any **otherwise valid voter registration application and absentee ballot application** from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election. (Emphasis added).

(Emphasis added). To verify identity and eligibility and to determine if an application is **otherwise valid**, HAVA establishes the minimum standards for voter registration (Section “a”) and voting (Section “b”). Through congressional enactment, HAVA sets the minimum requirements for administration of federal elections. Specifically, HAVA has a preemption clause for inconsistent state laws, violating HAVA’s minimum standards, 52 U.S.C. § 21084, which applies to 52 U.S.C. § 21083(a)(5)(A)(i-iii). In direct

conflict with federal and state law, DOS has issued directives and guidance to election officials to exempt UOCAVA applicants entirely from any verification requirements under 52 U.S.C. § 21083(a)(5)(A)(i-iii). Without such verification of UOCAVA voters, Pennsylvania elections are subject to manipulation by foreign nations such as Iran and individual bad actors. The DOS has unilaterally eliminated the mandatory election security procedures for voter registration..

52 U.S.C. § 21083(a) sets the requirements for voter registration, which includes verification of voter registration application information. Intervenors claim that HAVA merely requires “state officials to *collect* voter registration applicants’ driver’s license or social security numbers” (R. Doc 29, at 3) but the relevant section of HAVA is titled “**Verification** of Voter Registration Information” and includes mandates for states “to match information” with government databased in order to “**verify** the accuracy of the information provided on applications for voter registration.”

HAVA - 52 U.S.C. § 21083(a)(5)(A)(i & ii) provide:

(5) Verification of voter registration information

(A) Requiring provision of certain information by applicants

(i) In general

Except as provided in clause (ii), notwithstanding any other provision of law, an application for voter registration for an election for Federal office may not be accepted or processed by a State unless the application includes –

- (I) in the case of an applicant who has been issued a current and valid driver’s license, the applicant’s driver’s license number; or
- (II) in the case of any other applicant (other than an applicant to whom clause (ii) applies), the last 4 digits of the applicant’s social security number.

Congress included requirements for state officials regarding **how** to verify that the information provided on voter registration applications is accurate. 52 U.S.C. § 21083(a)(5)(B)(i & ii) provides that state officials obtain driver's license and social security data from the motor vehicle authority and from the Commissioner of Social Security, respectively.

To be sure, there is a Special Rule for applicants who have not been issued a DL and who have not been issued a SSN. However, that Special Rule does not apply to 95% to 99% of US citizens who are former residents of Pennsylvania who have a DL or have been issued a SSN as those individuals are required to provide the numbers. (R. Doc. 23, ¶¶ 77-79) County boards exercise discretion on acceptable alternate identification for non-UOCAVA applicants, but those procedures are not at issue in this case.

It is important to note the procedural flow that HAVA establishes. All voter registration application information must **first** be entered into the statewide voter registration database **before** the HAVA mandated identification matching can occur. This is clear in the plain reading of the text as states are required to “match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority...” The matching is done after the applicant has been entered into the system. The act of entering applicant information in the system does not result in a valid voter registration. First enter and then “verify the

accuracy of the information provided on applications for voter registration.” 52 U.S.C. § 21083 (a)(5)(B)(i).

Defendants claim that applicants to whom the Special Rule applies are entered into the voter registration system and that because they have been entered into the system – states do not have to “verify the accuracy of the information provided on the application for voter registration.” Again, Defendants conflate the HAVA procedure to add the applicant’s information in the statewide database with an exemption to verification of accuracy or validity of the information on the application. All applicants, including those who provide a valid DLN, those who provide a valid SSN4 and those who indicate that they have neither --are entered into the system **before** the verification or attempted matching is done.

Specifically, HAVA establishes minimum mandates for voter registration applicants to provide certain information, and a mandate for election officials to verify the accuracy of the information provided on all applications for voter registrations. The chief election officer is responsible under HAVA to ensure that the system is in place to verify the accuracy of the information on a voter registration application by attempting to match the information to the state motor vehicle authority and/or with information in the social security database. That mandatory matching is done after the voter registration application information is entered into the statewide voter registration database. This procedure is intended to protect the integrity of elections.

HAVA requires the State to **also** determine whether voter registration applicants have provided sufficient information for the registration application process according to state requirements. 52 U.S.C. § 21083(a)(5)(A)(iii) applies to all voter registration applications and requires the state to determine if the information provided on the voter registration applications meets all requirements in State law in addition to the federal requirements – **not instead of** the federal requirements. The Defendants’ assertion that 52 U.S.C. § 21083(a)(5)(A)(iii) somehow eliminates the federal requirements leads to the absurd consequences of verification of the accuracy of application information for some voters but not others and a bypass of the requirement for UOCAVA applicants. The text of A(iii) does not instruct the State to disregard the explicit textual requirements of A(i) and A(ii). In fact, the plain reading of A(iii) confirms that states must verify voter registration application information and determine if the information provided also meets state requirements. 52 U.S.C. § 21083(a)(5)(A)(iii) includes a requirement that the state verify that the requirements of A(i) and A(ii) are met:

The State shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law.

Additionally, Pennsylvania law requires UOCAVA applicants to satisfy the voter eligibility requirements of the Commonwealth including residency requirements. See 25 Pa.C.S. § 3502. The Pennsylvania Election Code establishes that a UOCAVA application may be rejected if an omission prevents an election official from

determining whether the UOCAVA applicant is eligible to vote. See 25 Pa.C.S. § 3515(a)(1).

E. Absentee Ballot Application Verification Process is Unlawfully Bypassed by Defendants.

The guidance issued by the PA Department of State violates UOCAVA and does not meet HAVA's minimum standard for verification of the accuracy of information on voter registration applications. It similarly does not comply with Pennsylvania's absentee ballot application procedures or UOCAVA's requirement for states to determine if the absentee ballot application is otherwise valid.

25 P.S. § 3146.2 outlines this second process – the absentee ballot application process. The section provides:

Any qualified elector...may apply at any time...for any official absentee ballot...

(a) An application for a qualified elector under subsection (a) **shall** contain the following information: Home residence at the time of entrance into actual military service or Federal employment, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident of voting district, voting district if known, party choice in case of primary, name and, for a military elector, his Stateside military address, FPO or APO number and serial number. **Any elector other than a military elector shall in addition specify the nature of his employment**, the address to which ballot is to be sent, relationship where necessary, and such other information as may be determined and prescribed by the Secretary of the Commonwealth. When such application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

25 P.S. § 3146(c) provides that “qualified” absentee military or overseas electors may submit their application for an official ballot by electronic transmission – per UOCAVA.

When attempting to determine if an absentee ballot application is “otherwise valid” election officials “shall ascertain from the information on such application, district register or from any other source that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled.” 25 Pa.C.S. § 3146.2b (emphasis added).

Defendants rely on 3 sections of Pennsylvania law to support their position that UOCAVA voters are exempt from identification requirements at any stage in the voting process. Once again, the Defendants are “conflating” the process of voter registration, the process of applying for an absentee ballot, and voting, to reach their inaccurate legal conclusion.

None of the statutory provisions relied upon by the Defendants deal with “voter registration.” Additionally, all statutory provisions cited presume that the voter is “qualified” to vote in Pennsylvania elections – something that could not be ascertained without verification of identity and eligibility in the voter registration process.

Defendants rely on: 25 P.S. § 3146.2(j) Applications for official absentee ballots; 25 P.S. § 3146.5(c) Delivering or mailing ballots; and 25 P.S. § 3146.8(i) Canvassing of Official Absentee and mail in ballots. (See R. Doc. 30, at 9, 20).

Consistent with HAVA’s (b)(1) exception, the Pennsylvania’s election code exempts qualified and eligible UOCAVA electors from the additional proof of identification document requirements when applying for and returning absentee ballots. Consistent with HAVA, if an applicant is determined to be a qualified elector according

to state and federal law and if they are determined to be eligible to receive UOCAVA voting privileges, that elector is not required to provide the additional proof of identification – that is otherwise required to be returned with absentee ballots.

25 P.S. § 3146.1 establishes Pennsylvania’s registration requirements for voting by absentee ballot:

- (a) Any qualified elector who is or who may be in the military service...and regardless of whether he is registered or enrolled; or
 - (b) Any qualified elector who is a spouse or dependent residing with or accompanying a person in the military service...Provided, however, That the said elector has been registered...; or
- ***
- (g) Any qualified elector who expects to be or is outside the territorial limits of the several States of the United States...Provided, however, That said elector has been registered...

Data from the DOS corroborates that no verification of voter registration applications information and no verification of absentee ballot application information is being done before UOCAVA applicant participate in the third process of voting:

Ballot Application Types	Application Type	Ballots	ID Pending / No ID
Online MB Verified	OLMAILV	358,693	Verified
Online AB Verified	OLREGV	9,694	Verified
Paper MB	MAILIN	846,577	5,685
Online MB Not Verified	OLMAILNV	324,215	1,849
Paper AB	REG/CIV	13,541	172
Online AB Not Verified	OLREGNV	2,888	53
UOCAVA Ballot Types			
Federal Only (Unregistered)	F	12,794	0
Civilian Overseas	CVO	10,287	0
Military	M	4,178	0
Civ. Overseas Remote/Isolated	CRI	82	0
Military Remote/Isolated	MRI	51	0
UOCAVA Ballot Applications	TOTAL	27,392	0

R. Doc. 31, at 1-3.

F. The receiving, completing and returning of a ballot--the Voting Process is clarified.

Defendants mischaracterize Plaintiff's Amended Complaint and inaccurately accuse Plaintiffs of conflating voter registration and voting requirements under HAVA. (Doc. 30, pg. 5). Defendants state, "First, Plaintiffs complain that the Department's Voter ID Guidance, issued in 2022, states that UOCAVA voters are not required to prove proof of identification with their returned ballots. Am.Compl. ¶ 127" (Doc. 30, p. 9). This is an inaccurate characterization of Plaintiffs' Amended Complaint. The superimposed inclusion of "with the returned ballots" creates the "conflation" the Defendants reference.

52 U.S.C. § 21083(a), as set forth above, establishes voter registration requirements. However, § 21083(b) applies to the third process which is "voting." The

section is applicable only after an applicant has become registered and after they have applied to receive a ballot. After the registration application process is complete and after the absentee ballot application is complete – the registered voter can receive a ballot and vote. 52 U.S.C. § 21083(b), the requirements for voters who register by mail only, provides an exemption:

(3) Inapplicability

Paragraph (1) shall not apply in the case of a person –

(A) who is –

- (i) entitled to vote by absentee ballot under the Uniformed and Overseas Absentee Voting Act;

The exemption for eligible UOCAVA voters explicitly says that the requirements of “Paragraph (1) shall not apply” and Paragraph (1) requires a copy of an identification document submitted “with the ballot.” Plaintiffs have been clear that this is the only exemption for UOCAVA eligible voters. It is important that the Court understand this clarification. This exemption does not exempt UOCAVA voters from HAVA’s voter registration requirements, and it is not an exemption from absentee ballot application requirements.

In sworn testimony before the General Assembly, Defendant Johnathan Marks was asked about how UOCAVA applicants are verified. Mr. Marks responded, “That group of voters are specifically exempted from [sic] the HAVA verification requirements...They do not have to provide PennDOT ID or last 4 of SSN...There’s no systematic verification.” (Doc. 23, ¶¶ 10,11; Ex. B). Defendants do not deny the

statements made by Jonathan Marks, confirming Pennsylvania’s practice to exempt UOCAVA voters entirely from verification requirements in the registration process. (Doc. 30, p. 18) Guidance provided through the Department of State’s Guidance on Military and Overseas Voters similarly includes the Department’s “position” that UOCAVA applicants are exempt from ID requirements. (Doc. 23, ¶¶ 12-13, 131; Ex. E).

G. Defendants’ federally-preempted directives and guidance cause an illegal campaign structure.

Defendants have implemented an illegal election structure regarding military and overseas voting that the Plaintiff-Congressional candidates and UOCAVA voters are forced to participate in. This illegal election structure creates vulnerabilities and the opportunity for ineligible ballots to dilute valid ballots from military service members. Votes tallied under this structure undermine the credibility of the election.

Defendants rely on 52 U.S.C. § 21083(b)(3)(C)(i) for the assertion that the minimum verification of identify and eligibility requirements do not apply to UOCAVA applicants, but this section, as the paragraph makes clear, applies to registered voters who have applied for and received a ballot and return that ballot by mail. This step follows the voter registration application process - during which the identity and eligibility of voters has already purportedly been verified. It is the Defendants that are conflating the requirements relating to voter registration, and the return of a mail ballot – two very different events.

Under HAVA, UOCAVA voters are exempted ONLY from submitting a copy of their identification with their ballots – in the voting process, but although exempted, UOCAVA voters must be “qualified electors,” entitled to vote under UOCAVA. This must be determined through verification of identity and eligibility in the voter registration process.

Curiously, the Defendants point to the 52 U.S.C. § 21083(b)(3)(C)(i) exemption from “Requirements for voters who register by mail” as an excuse for not attempting to verify identity or eligibility for UOCAVA applicants some of whom aren’t even registered. But, an exemption for registered voters who registered by mail cannot apply to applicants who are never registered at all.

The Defendants’ directives ordering election officials to send this category of UOCAVA applicants a ballot for federal elections without accepting and processing otherwise valid voter registration application is a violation of UOCAVA and a violation of HAVA. Through no fault of their own, these unregistered and unverified “federal only” applicants are not currently registered.

Federal law requires voter registration as a condition of voting in a federal election. Under UOCAVA, the Defendants must immediately process the voter registration applications according to the minimum requirements of HAVA and verify the applicants’ identity and eligibility before accepting and counting ballots from the nearly 15,000 unregistered “federal voters” who have already received ballots.

Federal law and state law require verification of identity and eligibility in the registration process. Pennsylvania law specifically provides that qualified electors who expect to be outside the territorial limits of the United States “shall register.” 25 P.S. § 3146.1(g). Under Pennsylvania law, military voters are the only exception to registration. And even military voters must be shown to be “qualified” electors in order to participate in the voting process and then sss. Qualifications to register are outlined in 25 Pa.C.S. ¶ 1301(a). Voter registration is a condition of voting in federal elections. The Defendants have no authority to allow unregistered individuals to vote in the upcoming federal election.

II. The other elements for prospective declaratory and injunctive relief have been met.

It is important to note that if the prospective declaratory and injunctive relief is granted, the verification process will be invisible to the vast majority of UOCAVA applicants. Fair, accurate elections are most certainly in the public interest. The duty for complying with an order from this court will be on the DOS to process the attempt to match using the DOS system. The UOCAVA applicants have already submitted their applications with identification information and have already received their ballots. The relief requested is action by the DOS to comply with the attempt to match and mandatory registration requirements. Only those applicants who provided invalid DLN or invalid SSN4 would be contacted to correct the deficiency, but none have been and none would be prevented or delayed in receiving a ballot. The Plaintiffs’ opening brief

shows the other elements required for prospective declaratory and injunctive relief have been met. The Plaintiffs will rely on those arguments to respond to Defendants' and Intervenors' arguments to the contrary.

Dated: October 17, 2024

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Use of AI Technology Certification

Counsel attests that appropriate steps to verify whether AI technology systems have been used in preparation of this submission and if so, appropriate steps were taken, to the best of counsel's ability, to verify the truthfulness and accuracy of facts and citations of that content before submission to this Court. This submission did rely upon the ordinary or customary research tools and other available research sources such as, but not limited to, Westlaw or Lexis.

Dated: October 17, 2024

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