

**Legality of the Use of Ranked Choice Absentee Ballots for Military and Overseas Voters in Runoff Elections**

This memo analyzes the potential legal issues with the use of ranked choice absentee ballots (also known as “absentee instant runoff ballots”) for military and overseas voters. These ballots enable U.S. citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) to cast votes in runoff elections in states where the ballot turnaround time between first round and second runoff elections is short. Three states and one municipality have adopted ranked choice absentee ballots for military and overseas voters in most of their runoff elections. T

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# Summary

This memo analyzes the potential legal issues with the use of ranked choice absentee ballots (also known as “absentee instant runoff ballots”[[1]](#footnote-1)) for military and overseas voters. These ballots enable U.S. citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA)[[2]](#footnote-2) to cast votes in runoff elections in states where the ballot turnaround time between first round and second runoff elections is short.

Three states and one municipality have adopted ranked choice absentee ballots for military and overseas voters in most of their runoff elections. The use of these ranked choice ballots is unlikely to violate the Equal Protection or Due Process Clauses of the Constitution, or to disenfranchise absentee voters. In addition, ranked choice absentee ballots may help states avoid UOCAVA litigation associated with their runoff elections. Furthermore, preserving the option for states to hold runoff elections relatively soon after the first round may prevent decreases in voter turnout associated with increasing the gap between the rounds of voting.

# Background

American citizens living abroad, including men and women in uniform, often face difficulties voting in elections at home. Due to the logistics of election administration, many overseas voters do not receive their ballots in time to return them and have them counted.

Congress passed the Uniformed and Overseas Citizens Absentee Voting Act of 1986[[3]](#footnote-3) (“UOCAVA” or “the Act”) to protect the voting rights of U.S. citizens residing abroad. UOCAVA requires states to “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.”[[4]](#footnote-4) The Act covers “absent uniformed services voters,” defined as active duty members of the uniformed service, members of the merchant marine, and their spouses or dependents, who, by reason of their active duty or service, are “absent from the place of residence where the member is otherwise qualified to vote.”[[5]](#footnote-5) It also covers “overseas voters,” defined as “an absent uniformed services voter who, by reason of active duty or service is absent from the United States on the date of the election involved,” or a U.S. citizen residing outside the United States who “is qualified to vote in the last place in which the person was domiciled before leaving the United States” or would be qualified but for their residency abroad.[[6]](#footnote-6)

In 2009, Congress expanded UOCAVA’s protections by passing the Military and Overseas Voter Empowerment Act[[7]](#footnote-7) (“MOVE Act”). The MOVE Act mandated, among other provisions, that states send timely requested absentee ballots to UOCAVA voters at least 45 days before federal elections.[[8]](#footnote-8)

States have discretion in how to implement UOCAVA and the MOVE Act. For example, the Uniform Law Commission (ULC) has worked with states to enact the Uniform Military and Overseas Voters Act (UMOVA). UMOVA is a model state bill that extends the protections of UOCAVA and the MOVE Act to state and local elections, which are not directly covered by the federal laws. The ULC adopted UMOVA in 2010, and as of June 2011, six states have passed this legislation,[[9]](#footnote-9) including Colorado,[[10]](#footnote-10) Nevada,[[11]](#footnote-11) North Carolina,[[12]](#footnote-12) North Dakota,[[13]](#footnote-13) Oklahoma,[[14]](#footnote-14) and Utah.[[15]](#footnote-15)

Some jurisdictions have attempted to comply with the MOVE Act’s 45-day ballot turnaround requirement by lengthening the period of time between primary and general elections or between voting rounds in two-round runoff elections. For example, Colorado,[[16]](#footnote-16) Hawaii,[[17]](#footnote-17) Maryland,[[18]](#footnote-18) Minnesota,[[19]](#footnote-19) Vermont,[[20]](#footnote-20) and Washington[[21]](#footnote-21) have moved back the dates of their primary elections. Texas recently changed its runoff primary election date from the second Tuesday in April to the fourth Tuesday in May following the general election.[[22]](#footnote-22) Alabama, Georgia, and North Carolina changed the dates of their primary runoff elections as a result of UOCAVA lawsuits brought by the Department of Justice,[[23]](#footnote-23) and Florida did away with its primary runoff elections entirely.[[24]](#footnote-24)

When applied to runoff elections, these changes have potentially negative impacts involving pushing first or second rounds of voting into less convenient times. In Oklahoma, for example, the first round of its primary runoff now will occur during its legislative session. In addition, evidence suggests that increasing the time between an election and the runoff contributes to lower runoff election turnout among polling place voters.[[25]](#footnote-25)

Ranked choice absentee ballots provide a better solution by ensuring that the election calendar will not present an obstacle to overseas ballots being returned in time to be counted. Overseas voters receive two ballots—a standard ballot for the first election and a ranked choice ballot for the second election. The ranked ballot contains all the candidates from the first election, and voters rank them in order of preference, from first to last. Both ballots are returned before the first election, and the standard ballot is counted as usual. In the event of a runoff election, the ranked ballot is counted towards the highest ranked candidate who advances to the second round.

Ranked choice absentee ballots have been adopted by the states of Arkansas, Louisiana, and South Carolina to protect the absentee voting rights of their military and overseas voters in runoff elections taking place in those states. UOCAVA only applies to federal elections, but some states have extended the Act’s protections to runoffs for state and local elections:

**Arkansas**

In 2005, Arkansas approved legislation to provide instant runoff absentee ballots to overseas military voters for federal, state, and local runoff elections.[[26]](#footnote-26) In 2007, the state extended the use of these ballots to all overseas voters.[[27]](#footnote-27) In addition to the regular absentee ballot, overseas voters receive a “special runoff ballot” (called the “pink ballot”) for each “general primary election” and “general runoff election,” in case runoffs are required after the preferential primary and general elections, respectively.[[28]](#footnote-28) Runoffs are held when three or more candidates qualify for an office in the preferential primary or general elections.[[29]](#footnote-29) According to the Arkansas Secretary of State, more than 1,100 overseas voters received instant runoff absentee ballots for the 2010 general election.[[30]](#footnote-30)

**Illinois**

Illinois amended its election code in 2008 to allow municipalities to provide military and overseas voters with ranked absentee ballots for municipal and township offices.[[31]](#footnote-31) UOCAVA voters receive a regular ballot for the consolidated primary election and a ranked ballot for the consolidated election.[[32]](#footnote-32)

Illinois’ capital city of Springfield is currently the only municipality to have adopted instant runoff absentee ballots for military and overseas voters. Voters approved the referendum by a margin of 91% to 9% in 2007, and it was implemented for the first time in its 2011 municipal elections.[[33]](#footnote-33) In 2010, the state issued detailed rules for implementing ranked choice absentee ballots, which were published in the *Illinois Register*.[[34]](#footnote-34)

**Louisiana**

Louisiana has used ranked choice absentee ballots for overseas voters and out-of-state military voters in many of its elections since the early 1990s.[[35]](#footnote-35) In federal, state, and local elections that may have runoffs, these voters receive a regular absentee ballot for the general election[[36]](#footnote-36)and a ranked “special absentee ballot” for use in the second runoff election, if one is required.[[37]](#footnote-37) The ranked choice ballots are counted only in the event that no candidate wins with an outright majority of the votes cast in the first election.

Louisiana sent 9,221 ranked choice absentee ballots to military and overseas voters in the November 2008 election.[[38]](#footnote-38) In the November 2010 elections, Orleans Parish (which includes New Orleans) sent 1,469 ballots to military and overseas voters.[[39]](#footnote-39)

**South Carolina**

Under the pressure of threatened litigation from the Department of Justice, South Carolina in 2006 adopted absentee instant runoff ballots for military and overseas voters for federal and state primary runoff elections.[[40]](#footnote-40) UOCAVA voters receive a regular absentee ballot for the primary, along with an “absentee instant runoff ballot for each potential second primary.”[[41]](#footnote-41)

Early results from the 2006 South Carolina primaries indicate that the absentee instant runoff ballots program has been very successful. More than 70% of UOCAVA voters submitted ballots for both the primary and runoff elections. Of the absentee instant runoff ballots cast in the 24 counties where FairVote obtained information, 94% were valid and counted, showing high comprehension of the new system.[[42]](#footnote-42) Election administrators were also positive about the new system, with one county elections director calling it “a well thought-of solution to the short window problem.”[[43]](#footnote-43)

This is an example of the absentee instant runoff ballot in South Carolina:

INSTANT RUNOFF BALLOT

Official Ballot Republican Party Primary

{insert county name here} County, South Carolina

|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **INSTRUCTIONS TO THE VOTER**: The Instant Runoff Ballot will be used only in the event that no candidate seeking their party’s nomination to run for a particular office receives a majority of the votes in the Primary thus forcing a runoff. Instant Runoff Ballots will not be opened if there is no need for a runoff.  For each office on the Instant Runoff Ballot, indicate your order of preference for each candidate whose name is printed on the ballot by filling in the circle in the corresponding column to the right of each candidate. You are not required to indicate a second choice, third choice, and so on. Remember, the more candidates you rank, the more likely your vote will affect the outcome of a potential runoff.  **Example**   |  |  |  |  | | --- | --- | --- | --- | | **U.S. SENATOR**  Rank the candidates in order of preference | | | | | Candidate | 1st Choice | 2nd  Choice | 3rd  Choice | | JOHN ADAMS | ➀ | ➁ | ⚫ | | THOMAS JEFFERSON | ⚫ | ➁ | ➂ | | GEORGE WASHINGTON | ➀ | ⚫ | ➂ |   In the Primary election, no candidate received a majority of the votes and the two candidates that received the most votes were John Adams and George Washington, thus eliminating Thomas Jefferson. Therefore, in this example, even though this voter liked Jefferson the best, Washington would receive the vote because the voter ranked Washington the highest of the runoff candidates. |

# III. Potential Legal Issues

Recent judicial opinions concerning the Uniformed and Overseas Absentee Voting Act suggest that ranked choice voting (RCV) for military and overseas voters would withstand legal scrutiny. First, several courts have ruled that the Act’s distinction between citizens residing inside and outside the territorial boundaries of the United States does not violate the Equal Protection Clause or Due Process Clause of the Constitution. Second, the fact that military and overseas voters do not know which candidates advance to the second election before they cast their ranked choice ballot does not necessarily violate their voting rights. Finally, ranked choice absentee ballots may help states avoid UOCAVA litigation by providing a solution to the 45-day ballot transit time required by the MOVE Act.

## Equal Protection and Due Process

The states that provide ranked choice absentee ballots to military and overseas voters do not currently allow non-UOCAVA voters to cast ranked choice ballots in runoff elections. It is likely constitutional, however, for states to distinguish between UOCAVA and non-UOCAVA voters in their absentee ballot procedures. Courts have so far rejected challenges to the constitutionality of UOCAVA, affirming that it does not violate the equal protection or due process guarantees.

Under UOCAVA, the “United States” includes the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands.[[44]](#footnote-44) While the Act covers all absent uniformed services voters, overseas voters are covered only if they reside “outside the United States.”[[45]](#footnote-45) This means that the Act does not protect the absentee voting rights of U.S. citizens who move from one of the 50 states to, for example, the District of Columbia or a U.S. territory.

In *Igartua De La Rosa v. United States*,[[46]](#footnote-46) a Puerto Rican resident who had formerly voted in presidential elections elsewhere challenged the Act’s distinction between citizens living abroad and citizens living within the territorial boundaries of the United States. The First Circuit held that this distinction was subject only to rational basis scrutiny, reasoning that it “neither affects a suspect class nor infringes a fundamental right.”[[47]](#footnote-47) The court found that Congress had a rational basis for protecting the absentee voting rights of voters who move overseas because they would “lose their right to vote in all federal elections,” while “voters who move to a new residence within the United States are eligible to vote in a federal election in their new place of residence.”[[48]](#footnote-48)

Similarly, in *Romeu v. Cohen*,[[49]](#footnote-49) the Second Circuit held that UOCAVA did not violate the Equal Protection Clause of the Constitution by protecting the right to vote in presidential elections of U.S. citizens who are former residents of states and residing outside the United States, but not of those who are former residents of states and residing in a U.S. territory. The court stated that such a difference in treatment was not subject to strict scrutiny, and regardless of the level of scrutiny required, it was “supported by strong considerations, and . . . well tailored to serve these considerations.”[[50]](#footnote-50)

In the pre-UOCAVA case *McDonald v. Board of Election Commissioners*,[[51]](#footnote-51) the Supreme Court upheld Illinois’ absentee ballot provisions under the Equal Protection Clause. The statute at issue extended absentee voting privileges to county residents who were medically incapacitated and to unsentenced prisoners outside their county of residence, but not to unsentenced prison inmates within their county of residence who were unable to appear at the polls because they could not post bail. The Court reasoned that a law that made voting easier for some groups but not for others was not arbitrary or invidiously discriminatory just because the legislature did not go as far as it could and “strike at all evils at the same time.”[[52]](#footnote-52) Furthermore, the Court stated in *Katzenbach v. Morgan*[[53]](#footnote-53) that a “statute is not invalid under the Constitution because it might have gone farther than it did.”[[54]](#footnote-54)

These cases indicate that using ranked choice absentee ballots for military and overseas voters is unlikely to violate the Constitution. The state statutes cited above distinguish between UOCAVA voters and other absentee voters, and this distinction is supported by state interests in protecting the absentee voting rights of their military and overseas voters and complying with federal laws. While UOCAVA only applies to military and overseas voters, nothing in the statute prevents states from providing greater protections by extending ranked choice ballots to all absentee voters. States can take this additional step, but the language in *McDonald* and *Katzenbach* suggests that they are not required to do so.

## Candidate List

In states that use ranked choice absentee ballots for UOCAVA voters, the ballot includes the names of all the candidates who ran in the first (primary or general) election. Voters return the ballot with their ranked preferences before they know which candidates advance to the runoff election. Two recent cases suggest that this practice is not illegal:

In 2004, Pennsylvania’s Supreme Court affirmed the exclusion of independent presidential candidate Ralph Nader and vice presidential candidate Peter Miguel Camejo from the ballot less than two weeks before the November 2 election. By that time, nearly all of the more than 26,000 absentee ballots sent to military and overseas voters had included Nader’s and Camejo’s names among the list of candidates. In *United States v. Pennsylvania*,[[55]](#footnote-55) the Department of Justice brought suit to order county election directors to reissue updated ballots to UOCAVA voters and to extend the deadline for the return of their ballots. The DOJ claimed that it was a violation of the Act for UOCAVA voters to receive ballots with Nader’s and Camejo’s names, instead of the final certified ballot.[[56]](#footnote-56)

The court denied the United States preliminary injunctive relief, stating that “UOCAVA does not govern ballot content” and finding that the government had not shown that the “alleged ballot defect” denied UOCAVA voters the right to vote absentee.[[57]](#footnote-57) Even if including Nader’s and Camejo’s names on the ballots did disenfranchise UOCAVA voters, the court found that the potential harm to the “efficient and fair administration of elections” weighed against reissuing the ballots.[[58]](#footnote-58)

In *New Jersey Democratic Party, Inc. v. Samson*,[[59]](#footnote-59) the New Jersey Supreme Court ordered that revised ballots be mailed to absentee voters, with priority given to the ballots of military and overseas voters, after the Democratic candidate for U.S. senator withdrew from the race and was replaced just 34 days before the election. The court found there was sufficient time before the election to amend and distribute the ballots, and for voters to return them, without disenfranchising absentee voters. As a result, the court was able to reconcile the “conflicting goals” of “full voter choice” and “orderly administration of elections.”[[60]](#footnote-60)

*Pennsylvania* and *New Jersey Democratic Party* are not exactly on point, but both support the argument that including the complete list of candidates and not just continuing candidates does not violate the rights of UOCAVA voters. Ranked choice absentee ballots are similar to the ballots at issue in those cases in the sense that it is possible for voters to select candidates who are no longer running. The *Pennsylvania* court noted that the right to vote absentee was protected because votes for Nader and Camejo would be treated as write-in votes.[[61]](#footnote-61) Similarly, ranked choice absentee ballots preserve the right by counting votes for the highest ranked candidate that qualifies for the runoff round. In addition, unlike the Pennsylvania absentee voters, UOCAVA voters in states that provide ranked choice absentee ballots have notice that their preferred candidate may not advance to the second election: along with their ballot, they receive instructions that explain how the ranking process works.[[62]](#footnote-62) Any potential harm to the voters would likely be mitigated by this advance notice or outweighed by the long-recognized state interest in orderly election administration.

While the New Jersey Supreme Court held that the ballots did have to be revised and redistributed, it based its decision on the fact that election officials would have enough time to send amended ballots to absentee voters. This, however, would not be a practicable solution in those states with short turnaround times between first and second elections. Taking the time to print ballots with only the advancing candidates would likely violate the MOVE Act’s 45-day ballot-transit requirement and make those states vulnerable to enforcement suits by the DOJ.

## Avoiding UOCAVA Litigation

The DOJ has the authority under UOCAVA to bring enforcement actions against states that do not comply with the statute.[[63]](#footnote-63) Since UOCAVA was enacted in 1986, the DOJ’s Civil Rights Division has brought at least 40 enforcement lawsuits.[[64]](#footnote-64) A number of these cases have dealt with states not providing sufficient turnaround time for UOCAVA voters’ ballots before runoff elections. In recent suits against Alabama,[[65]](#footnote-65) Georgia,[[66]](#footnote-66) and North Carolina,[[67]](#footnote-67) the DOJ agreed to have the cases dismissed after the states enacted legislation that expanded the time between their federal primary and primary runoff elections.

It is likely that states could avoid litigation under UOCAVA by using ranked choice absentee ballots for military and overseas voters, though courts have not yet ruled on whether it is an appropriate remedy for the ballot turnaround time problem. State legislatures have complied with the Act, both voluntarily and under threat of litigation, by increasing the time between elections, but nothing in the statute mandates that they choose this remedy. Furthermore, the states that provide ranked choice absentee ballots allow for fewer than 45 days between their primary and primary runoff elections: in 2010, the Louisiana first party primary took place on August 28 and the runoff election took place on October 2; the South Carolina primary on June 8 and the runoff on June 22; and the Arkansas primary on May 18 and the runoff on June 8.[[68]](#footnote-68) These states nevertheless have not faced legal challenges under UOCAVA. While the DOJ has not explicitly endorsed ranked choice absentee ballots for military and overseas voters, it has precleared their use in Louisiana and South Carolina under Section 5 of the Voting Rights Act.[[69]](#footnote-69)

This indicates that as long as states send military and overseas voters both the regular absentee ballot and the ranked ballot at least 45 days before a federal election, they will be in compliance with UOCAVA. In addition, jurisdictions covered by Section 5 will likely not face problems with attaining DOJ preclearance for the use of ranked choice absentee ballots.

# Conclusion

Ranked choice absentee ballots provide a legal and practical solution to the disenfranchisement of military and overseas voters that can take place when runoff elections take place soon after the first round of voting. Ranked choice ballots enable UOCAVA voters to participate in runoff elections, and as an added benefit, they may also help states avoid DOJ lawsuits under UOCAVA. The limited evidence from the use of these ballots in practice suggests that military



and overseas voters are handling them with few problems and returning them in numbers equivalent to those returning traditional absentee ballots. By implementing ranked choice absentee ballots, states could thus proactively protect the rights of UOCAVA voters. Furthermore, states can avoid the inconvenience and lower voter turnout associated with lengthening their elections cycles.ing their elections cycles.

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1. “Ranked choice” is FairVote’s preferred terminology in the context of absentee ballots for military and overseas voters, but it is used interchangeably with “instant runoff.” Some state statutes use the term “instant runoff ballots” to describe their ranked ballots for UOCAVA voters. See, for example, South Carolina’s absentee instant runoff ballot provisions. S.C. Code Ann. § 7-15-405 (2011). [↑](#footnote-ref-1)
2. Voters covered by UOCAVA are referred to as “UOCAVA voters” or “military and overseas voters” in this report, though state statutes regarding ranked choice absentee ballots may cover a narrower or broader class of voters than the Act does. [↑](#footnote-ref-2)
3. 42 U.S.C. § 1973ff et seq. [↑](#footnote-ref-3)
4. § 1973ff-1. [↑](#footnote-ref-4)
5. § 1973ff-6(1). [↑](#footnote-ref-5)
6. § 1973ff-6(5). [↑](#footnote-ref-6)
7. Pub. L. No. 111-84, 123 Stat. 2190 (2009). [↑](#footnote-ref-7)
8. § 1973ff-1(a)(8). [↑](#footnote-ref-8)
9. *See* *Military and Overseas Voters Act*, Uniform Law Commission, http://www.nccusl.org/Act.aspx?title=Military%20and%20Overseas%20Voters%20Act (last visited June 17, 2011). [↑](#footnote-ref-9)
10. H.B. 1219, 68th Gen. Assemb., 1st Reg. Sess., 2011 Colo. Laws 176. [↑](#footnote-ref-10)
11. A.B. 100, 2011 Leg., 76th Sess., 2011 Nev. Stat. 343. [↑](#footnote-ref-11)
12. H.B. 514, 2011-2012 Gen. Assemb., 2011 N.C. Laws 182. [↑](#footnote-ref-12)
13. S.B. 2120, 62d Leg. Assemb., Reg. Sess. (N.D. 2011). [↑](#footnote-ref-13)
14. S.B. 115, 53d Leg., 1st Sess., 2011 Okla. Sess. Laws 340. [↑](#footnote-ref-14)
15. S.B. 162, 59th Leg., Gen. Sess., 2011 Utah Laws 327. [↑](#footnote-ref-15)
16. S.B. 189, 68th Gen. Assemb., 1st Reg. Sess., 2011 Colo. Sess. Laws 243. [↑](#footnote-ref-16)
17. H.B. 2397, 25th Leg., Reg. Sess., 2010 Haw. Sess. Laws 126. [↑](#footnote-ref-17)
18. H.B. 671, 2011 Gen. Assemb., 428th Sess., 2011 Md. Laws 169. [↑](#footnote-ref-18)
19. S.F. 2251, 2010 Leg., 86th Sess., 2010 Minn. Laws 184. [↑](#footnote-ref-19)
20. S.B. 117, 2009 Leg., Reg. Sess., 2010 Vt. Acts & Resolves 73. [↑](#footnote-ref-20)
21. S.B. 5171, 2011 Leg., Reg. Sess., 2011 Wash. Sess. Laws 349. [↑](#footnote-ref-21)
22. S.B. 100, 82d Leg., Reg. Sess. (Tex. 2011). [↑](#footnote-ref-22)
23. *See* discussion and cases cited *supra* Part III.C. [↑](#footnote-ref-23)
24. S.B. 1118, 2001 Leg., Reg. Sess., 2001 Fla. Laws 40. [↑](#footnote-ref-24)
25. Forthcoming FairVote report. [↑](#footnote-ref-25)
26. H.B. 1770, 85th Gen. Assemb., Reg. Sess., 2005 Ark. Acts 751; Press Release, FairVote, Arkansas: “Instant Runoff” for Overseas Military Voters (Mar. 21, 2005), http://archive.fairvote.org/index.php?page=27&pressmode=showspecific&showarticle=23. [↑](#footnote-ref-26)
27. H.B. 1509, 86th Gen. Assemb, Reg. Sess., 2007 Ark. Acts 261; *see also* Ark. Code Ann. § 7-5-406(c)(1). [↑](#footnote-ref-27)
28. Ark. Code Ann. § 7-5-416(f)(1). [↑](#footnote-ref-28)
29. Ark. Code Ann. § 7-7-202. [↑](#footnote-ref-29)
30. Telephone Interview with Rob Hammons, Assistant Director, Elections Division, Arkansas Secretary of State (July 14, 2011). [↑](#footnote-ref-30)
31. *See* S.B. 439, 95th Gen. Assemb., 2008 Ill. Laws, Pub. Acts 095-0889. [↑](#footnote-ref-31)
32. 10 Ill. Comp. Stat. Ann. 5/16‑5.01(c) (LexisNexis 2011). [↑](#footnote-ref-32)
33. *The Solution*, Include Every Voter, http://www.includeeveryvoter.org/IL.php#solution (last visited June 20, 2011). [↑](#footnote-ref-33)
34. Procedures for Ranked Balloting, 34 Ill. Reg. 4892 (Apr. 2, 2010), *available at* http://www.cyberdriveillinois.com/departments/index/register/register\_volume34\_issue14.pdf; *see also* 26 Ill. Adm. Code 217 (2010). [↑](#footnote-ref-34)
35. *See* H.B. 591, 1992 Leg., Reg. Sess., 1992 La. Acts 438. [↑](#footnote-ref-35)
36. In 2012, the first round of the federal election will take place in November. It is called a “primary” in statute, but all candidates from all party affiliations contested against one another, and if any candidate secures an outright majority, that candidate wins. If not, the top two face off in a December “general” election regardless of party. The procedure is similar with state elections, but with different dates. Finally, note that in 2008-2010, Louisiana had a more traditional primary election system for federal elections, with a primary runoff for each party, and a single general election among the nominees of each party. [↑](#footnote-ref-36)
37. La. Rev. Stat. Ann. § 18:1306(A)(4) (2011). [↑](#footnote-ref-37)
38. U.S. Election Assistance Commission, *Uniformed and Overseas Citizens Absentee Voting Act: Survey Findings, November 2009*, available at http://www.eac.gov/assets/1/Page/2008%20Uniformed%20and%20Overseas%20Citizens%20Absentee%20Voting%20Act%20Survey.pdf. [↑](#footnote-ref-38)
39. Telephone Interview with Orleans Parish Registrar of Voters (July 14, 2011). [↑](#footnote-ref-39)
40. H.B. 3720, 2005 Leg., 116th Sess., 2006 S.C. Acts 253; *see also* Jim Davenport, *Primary Election Runoff Plan Could Be Expensive, Experimental*, Associated Press (Mar. 6, 2006), *available at* http://archive.fairvote.org/?page=21&articlemode=showspecific&showarticle=1078 [↑](#footnote-ref-40)
41. S.C. Code Ann. § 7‑15‑405 (2011). [↑](#footnote-ref-41)
42. *South Carolina, a Best Practice Case Study for Military and Overseas Voters*, FairVote, http://archive.fairvote.org/?page=1866 (last visited June 20, 2011). [↑](#footnote-ref-42)
43. *Id.* [↑](#footnote-ref-43)
44. 42 U.S.C. § 1973ff-6(6), § 1973ff-6(8). [↑](#footnote-ref-44)
45. 42 U.S.C. § 1973ff-6(5). [↑](#footnote-ref-45)
46. 32 F.3d 8 (1st Cir. 1994), *cert. denied*, 514 U.S. 1049 (1995). [↑](#footnote-ref-46)
47. *Id.* at 10. [↑](#footnote-ref-47)
48. *Id.* at 10-11. [↑](#footnote-ref-48)
49. 265 F.3d 118 (2d Cir. 2001). [↑](#footnote-ref-49)
50. *Id.* at 124. The court did not reach the question of precisely which level of scrutiny to apply. [↑](#footnote-ref-50)
51. 394 U.S. 802 (1969). [↑](#footnote-ref-51)
52. *Id.* at 811 (quoting Semler v. Dental Examiners, 294 U.S. 608, 610 (1935)). [↑](#footnote-ref-52)
53. 384 U.S. 641 (1966). [↑](#footnote-ref-53)
54. *Id.* at 657. [↑](#footnote-ref-54)
55. 2004 WL 2384999 (M.D. Pa. 2004). [↑](#footnote-ref-55)
56. *Id.* at \*1. [↑](#footnote-ref-56)
57. *Id.* at \*4. [↑](#footnote-ref-57)
58. *Id.* at \*6. [↑](#footnote-ref-58)
59. 175 N.J. 178 (2002). [↑](#footnote-ref-59)
60. *Id.* at \*195. [↑](#footnote-ref-60)
61. 2004 WL at \*4. [↑](#footnote-ref-61)
62. *See, e.g.*, La. Rev. Stat. Ann. § 18:1306(A)(4) (2011) (“The secretary of state shall also prepare instructions for use of the special ballot . . . .”). [↑](#footnote-ref-62)
63. 42 U.S.C. § 1973ff-4. [↑](#footnote-ref-63)
64. *See* *Voting Section Litigation*, U.S. Department of Justice, http://www.justice.gov/crt/about/vot/litigation/caselist.php#uocava\_cases (last visited June 17, 2011). [↑](#footnote-ref-64)
65. United States v. Alabama, C.A. No. 2:06-CV-0025-CSC\_\_\_ (M.D. Ala. Mar. 9, 2006). [↑](#footnote-ref-65)
66. United States v. Georgia, C.A. No. 1 :04-CV-2040-CAP (N.D. Ga. July 13, 2004). [↑](#footnote-ref-66)
67. United States v. North Carolina, C.A. No. 5:06-CV-00118-H (E.D.N.C. Mar. 16, 2006). [↑](#footnote-ref-67)
68. *2010 Primary Elections by State*, Federal Voting Assistance Program, *available at* http://www.fvap.gov/resources/media/vaghandout3.pdf. [↑](#footnote-ref-68)
69. *Comparing IRV With Balloting for Overseas Absentee Voters*, FairVote, http://www.fairvote.org/comparing-irv-with-balloting-for-overseas-absentee-voters (last visited July 7, 2011). [↑](#footnote-ref-69)