

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES AND THE
STATE OF OHIO, THROUGH SECRETARY OF STATE FRANK LAROSE,
REGARDING COMPLIANCE WITH THE UNIFORMED AND OVERSEAS CITIZENS
ABSENTEE VOTING ACT FOR THE MAY 3, 2022, PRIMARY ELECTION FOR
FEDERAL OFFICE**

A. Introduction.

This agreement is entered into between the United States of America, through the United States Department of Justice (“United States” or “the Department”), and the State of Ohio through the Ohio Secretary of State Frank LaRose (“the Secretary”), in his official capacity of Chief Election Officer of the State of Ohio, in order to secure the voting rights of absent uniformed services and overseas voters protected by the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 52 U.S.C. § 20301 *et seq.* UOCAVA provides that absent uniformed services voters and overseas voters (“UOCAVA voters”) shall be permitted “to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 52 U.S.C. § 20302.

This matter arises out of UOCAVA’s requirement that states transmit validly requested absentee ballots to UOCAVA voters not later than 45 days before an election for Federal office when the request is received at least 45 days before the election, unless a waiver is granted pursuant to Section 102(g) of UOCAVA. 52 U.S.C. § 20302(a)(8)(A) and (g). Secretary LaRose’s office is the single state office responsible for the implementation of UOCAVA in Ohio. Ohio Rev. Code Ann. § 3501.05(CC). Ohio’s primary election date is set by Ohio statute and this year is on May 3, 2022. Ohio Rev. Code Ann. § 3501.01(E)(1). Under Ohio law, only the Ohio General Assembly may prescribe “the time, place, and manner” of an election. Ohio Rev. Code Ann. § 3501.40. To date, the Ohio General Assembly has not changed the date of the

2022 primary election. The Ohio Secretary of State has no authority to change the date of the primary election. *Id.*

The Supreme Court of Ohio has required the post-decennial census districts for the Ohio General Assembly and Representative to Congress to be redrawn, and thus the districts for these offices were established on February 24, 2022, and March 2, 2022, respectively, much closer to the May 3, 2022, primary election than expected. On March 16, 2022, the Ohio Supreme Court held that the revised districts for the Ohio General Assembly were unconstitutional. *See generally League of Women Voters of Ohio v. Ohio Redistricting Comm.*, Slip Op. No. 2022-Ohio-789 (Mar. 16, 2022). The redistricting plans for Representative to Congress remain subject to pending litigation.

On February 26, 2022, the State through Secretary LaRose requested from the Presidential Designee for UOCAVA, the Secretary of Defense, a hardship exemption from UOCAVA's 45-day advance transmission requirement for the May 3, 2022, primary election. 52 U.S.C. § 20302(g). In its waiver request, Ohio claimed an undue hardship due to a legal contest. 52 U.S.C. § 20302(g)(2)(B)(ii). On March 4, 2022, the Department of Defense, pursuant to delegated authority from the Secretary of Defense as the Presidential Designee for UOCAVA, denied the State's application for a waiver.

The United States and the Secretary, through their respective counsel, have conferred and agree that this matter should be resolved without the burden and expense of litigation. The parties share the goal of ensuring that Ohio's UOCAVA voters will have sufficient opportunity to receive absentee ballots that they have requested and submit marked absentee ballots in time to be counted for the May 3, 2022, primary election for Federal office. As consideration for this Agreement, the United States has agreed to forgo litigation under UOCAVA as to the May 3,

2022, primary election, subject to compliance with the terms of this Agreement. The parties negotiated in good faith and hereby enter into this Agreement as an appropriate resolution of the UOCAVA claims alleged by the United States.

B. Recitals.

The United States and the State stipulate and agree that:

1. The United States District Court for the Southern District of Ohio has jurisdiction to enforce the provisions of UOCAVA, 52 U.S.C. §§ 20301 *et seq.*, and the Federal Court would have jurisdiction over an action brought by the United States to enforce the terms of this Agreement.
2. The United States Attorney General is authorized to enforce the provisions of UOCAVA, 52 U.S.C. § 20307.
3. The State of Ohio, by and through its Secretary of State, is responsible for complying with UOCAVA and ensuring that validly requested absentee ballots are transmitted to UOCAVA voters in accordance with the statute's terms. *Id.*
4. Frank LaRose is the Secretary of State of Ohio. The Ohio Secretary of State is the chief election officer in Ohio responsible for overseeing election administration, Ohio Rev. Code Ann. § 3501.04, and the Secretary of State's Office is the single state office responsible for the implementation of UOCAVA, *id.* § 3501.05(CC). The Secretary of State delegates to the eighty-eight county boards of elections certain responsibilities for the implementation of that act. *Id.* However, the parties acknowledge that the Secretary on behalf of the State remains responsible for ensuring compliance with UOCAVA and the terms of this Agreement.

5. Section 102(a)(8)(A) of UOCAVA requires that states transmit validly requested ballots to UOCAVA voters not later than 45 days before an election for Federal office when the request is received at least 45 days before the election, unless a waiver is granted by the Department of Defense pursuant to Section 102(g) of UOCAVA. 52 U.S.C. § 20302(a)(8)(A) and (g).
6. States can be exempted from the requirement to transmit ballots 45 days in advance of a Federal election if they apply for, and are granted, a waiver from the Presidential Designee for UOCAVA, the Secretary of Defense. 52 U.S.C. § 20302(g). On February 26, 2022, the State through Secretary LaRose applied for a waiver pursuant to Section 102(g) of UOCAVA, claiming an undue hardship due to a legal contest. 52 U.S.C. § 20302(g)(2)(B)(ii). On March 4, 2022, the Department of Defense, pursuant to delegated authority from the Secretary of Defense as the Presidential Designee for UOCAVA, agreed that the State had established an undue hardship because of a legal contest, but the Department of Defense denied the State's application for a waiver because the original, proffered plan in the waiver application filed at that time by the State through the Secretary, did not provide sufficient time for UOCAVA voters to vote and have their votes counted.
7. On May 3, 2022, absent any court order or new legislation delaying the date of the primary election, the State will conduct a primary election for Federal office in which voters will select candidates for the Federal general election on November 8, 2022. The 45th day before the May 3, 2022, primary election is March 19, 2022.
8. As of March 9, 2022, elections officials of the State had received timely requests for absentee ballots for the May 3, 2022, primary election for Federal office from

approximately 554 voters who are entitled to vote pursuant to the provisions of UOCAVA.

9. The Secretary has indicated that the litigation concerning districts for Ohio General Assembly and Representative to Congress caused the districts to be redrawn much closer to the election than was expected. Thus, the Secretary anticipates that some of its eighty-eight county boards of election will be unable to transmit validly requested absentee ballots to UOCAVA voters on March 19, 2022, and may need until on or about April 5, 2022, to do so, although that mailing date is not a certainty given the status of the litigation affecting the establishment of districts. The Secretary believes all of its county boards of election will be able to transmit ballots to UOCAVA voters, from whom valid UOCAVA ballot requests were received at least 29 days before the election, by no later than 28 days in advance of the May 3, 2022, primary election for Federal office, i.e., April 5, 2022.
10. Under Ohio law as of the time the hardship waiver was denied, UOCAVA ballots had to be voted and submitted for mailing not later than 12:01 a.m. (at the place where the voter completes the ballot) on the date of the election, and received no later than 10 days after Election Day (May 13, 2022), in order to be counted. Ohio Rev. Code Ann. §§ 3511.09, 3511.11. If the State's eighty-eight county boards of election were to transmit UOCAVA ballots on April 5, 2022, this would afford UOCAVA voters only 38 days to receive, mark and return their ballots for the May 3, 2022, Federal primary election.
11. The failure by Ohio to either transmit ballots to UOCAVA voters by the 45th day before the May 3, 2022, Federal primary election or to obtain a hardship waiver from

the Department of Defense would constitute a violation of Section 102(a)(8)(A) of UOCAVA. Absent corrective action, the failure of election officials in Ohio to transmit absentee ballots to UOCAVA voters who had validly requested them by the 45th day in advance of the May 3, 2022, Federal primary election will deprive United States citizens protected under UOCAVA of a sufficient opportunity to vote in that election.

12. The parties have engaged in extensive discussions and have reached an agreement on a series of actions that the State will take to remedy the potential violation of Section 102(a)(8)(A) of UOCAVA arising from some Ohio county boards of elections' possibly missing the March 19, 2022, UOCAVA deadline to transmit UOCAVA ballots for the May 3, 2022, Federal primary election, which could result in some UOCAVA voters not having a sufficient opportunity to receive, mark, and timely return the absentee ballots they have requested in time for them to count in the May 3, 2022, Federal primary election. It is the intent of the parties that the State immediately undertake and complete the actions set forth in this Agreement.
13. The parties recognize that the Secretary and the State have taken actions to begin implementation of this Agreement. Among these actions, on March 11, 2022, Ohio's Governor signed newly enacted legislation for the May 3, 2022, primary election that:
 - 1) extends the ballot receipt deadline for UOCAVA ballots returned by mail from UOCAVA voters through the twentieth day after the day of the election; 2) extends the time for UOCAVA voters to vote, sign and transmit completed ballots through the close of polls on election day; 3) requires the Secretary of State to take all steps necessary to expedite the delivery of blank ballots to UOCAVA voters and the return

of those completed ballots to the boards of elections. Ohio Am. Sub. S.B. No. 11 (2022). The legislation includes an appropriation of funds that will ensure that the costs of expedited delivery and return of ballots for the May 3, 2022, Federal primary election are not incurred by the UOCAVA voters. The parties also recognize that on March 11, 2022, the Secretary of State transmitted Directive 2022-29 to county boards of elections, regarding voting by UOCAVA voters under the terms of S.B. 11 for the May 3, 2022, primary election. Finally, the parties also recognize that the Secretary of State has committed to continuing to conduct outreach to UOCAVA voters as described in the waiver application dated February 26, 2022, and has conferred with the Federal Voting Assistance Program on the most effective means of expediting transmission of ballots to UOCAVA voters.

14. The parties agree that the plan specified in paragraph 13 above, implemented in accordance with the Terms of Agreement below, will provide sufficient time for UOCAVA voters to receive, mark, and timely return their absentee ballots so they can be counted in the May 3, 2022, Federal primary election.

C. Terms of Agreement.

Now, therefore, for full and adequate consideration given and received, the United States and the State agree that:

1. The State through Secretary LaRose shall ensure that the county boards of elections transmit ballots for the May 3, 2022, Federal primary election either electronically or by mail, according to the UOCAVA voter's choice, to all of the State's UOCAVA voters who have validly requested such ballots as soon as the ballot is finalized, and no later than April 5, 2022. With regard to all UOCAVA voters who have requested

transmission by mail, the State through Secretary LaRose shall provide for transmittal and return of such ballots as set forth in Paragraphs 4-5 below.

2. Should it at any time appear that any Ohio election officials will be unable to transmit UOCAVA ballots for the May 3, 2022, Federal primary election by April 5, 2022, or the State through the Secretary determines it is premature to do so, due to a pending candidate-related protest, an order of the Ohio Supreme Court or other court in relevant litigation, or any other reason, the Secretary shall immediately notify the United States of the circumstances causing the expected delay, and the parties shall meet and confer to discuss appropriate modification of this Agreement or other necessary remedial measures.
3. Ohio law has already been amended to extend the ballot receipt deadline for voted UOCAVA ballots returned by mail and received at the office of the board of elections after the close of the polls on Election Day through the twentieth day after the day of the election. Such ballot is eligible to be counted, unless the identification envelope is signed after the close of the polls on Election Day. The State through the Secretary shall ensure that each of its county election boards count as validly cast ballots in the May 3, 2022, primary election all ballots, including Federal Write-In Absentee Ballots, from qualified UOCAVA voters that are executed and sent by the close of polls on May 3, 2022, received by the appropriate county election board by May 23, 2022, and are otherwise valid.
4. The Secretary shall at his office's expense provide for express delivery, by the method he deems most appropriate based on the delivery destination, for the transmittal of blank ballots and return of completed ballots for UOCAVA voters.

Voted UOCAVA ballots returned using express delivery, either by mail or courier, shall be deemed “returned by mail” for purposes of the return deadline extension for voted UOCAVA ballots.

5. The Secretary shall take the necessary steps to ensure that each ballot sent by express mail or express delivery service to UOCAVA voters be accompanied by a pre-addressed express mail or express delivery form and appropriate envelope for a voter to utilize to return the ballot to appropriate election officials, as well as a set of instructions developed by the Secretary explaining how to return the ballot by express mail or express delivery. For ballots transmitted electronically, the Secretary shall provide instructions for the voter on returning the ballot by express mail or express delivery at the State’s expense. The Secretary shall ensure that all the county boards of elections take all necessary steps to provide affected UOCAVA voters a reasonable opportunity to learn of the terms of this Agreement as they apply individually to such voter. The Secretary agrees to post this Agreement on the Secretary’s web page dedicated to UOCAVA voting – voteohio.gov/uocava. Such notice to individual UOCAVA voters shall occur by telephone, facsimile, or e-mail where such contact information is available. Otherwise, a written notice will be mailed to each affected voter. The notice shall, at minimum: (a) explain that the deadline for the voter's ballot to be executed and sent is the close of polls on May 3, 2022; (b) explain the new extended deadline for receipt of the affected voter's ballot; and (c) provide appropriate contact information for assistance at the relevant election office.
6. The State shall provide a report to the United States Department of Justice no later than April 6, 2022, concerning the transmittal of UOCAVA ballots for the May 3,

2022, Federal primary election. The report shall (a) certify when ballots were transmitted in each county; and (b) specify for each county the number of requests received, the number of UOCAVA ballots transmitted, and the method of transmittal.

7. The State shall provide a report to the United States Department of Justice no later than May 31, 2022, in a format agreed to by the parties to this Agreement, concerning the UOCAVA ballots received and counted for the May 3, 2022, Federal primary election.
8. In consideration of the State through the Secretary complying with the terms of this Agreement, the United States agrees to forgo litigation under UOCAVA as to the May 3, 2022, primary election.

D. Time Period of Agreement.

The State's obligations under this Agreement shall commence immediately and shall expire in their entirety on June 30, 2022.

E. Enforcement.

The terms of this Agreement are intended to resolve the potential violation of Section 102(a)(8) of UOCAVA arising from the anticipated late transmission, by at least some of Ohio's county boards of elections, of UOCAVA ballots for the May 3, 2022, primary election and the denial of the State's waiver application on March 4, 2022.

If the parties are unable to resolve any dispute regarding the terms of this Agreement, the parties agree that the dispute may be resolved by the United States District Court for the Southern District of Ohio in an action brought by the United States to enforce this Agreement and/or UOCAVA.

Where the State materially fails in any manner to comply with the terms of this Agreement, this Agreement is enforceable immediately in the United States District Court for the Southern District of Ohio as set forth above, and additionally, in such event, the United States may also take any other actions necessary to enforce Section 102(a)(8) of UOCAVA in the United States District Court, including seeking appropriate relief as a substitute for or in addition to the actions that are subject of this Agreement. Nothing in this Agreement precludes the United States from taking appropriate enforcement action against the State for any other violations of UOCAVA that are not subject of this Agreement.

F. General.

This Agreement is binding on the parties and their successors in office. The parties agree to the admissibility of this Agreement in any subsequent proceeding for its enforcement, or other action filed to enforce Section 102(a)(8) of UOCAVA.

The undersigned enter this Agreement this 18th day of March 2022.

FOR THE UNITED STATES OF AMERICA:

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FOR THE STATE OF OHIO THROUGH THE OHIO SECRETARY OF STATE:


FRANK LAROSE
Ohio Secretary of State

Date: 18 March 2022