

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES AND THE  
STATE OF KANSAS REGARDING COMPLIANCE WITH THE UNIFORMED AND  
OVERSEAS CITIZENS ABSENTEE VOTING ACT**

**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 Kansas and its Secretary of State, Chris Biggs, in his official capacity as Kansas's chief state election official (collectively the "State"), to facilitate the State's compliance with Section 102(a)(8) of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009) ("MOVE Act"). 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." 42 U.S.C. § 1973ff-1.

This matter arises out of UOCAVA's requirement, pursuant to an amendment by the MOVE Act, that States transmit absentee ballots at least 45 days before an election for Federal office to eligible UOCAVA voters who have requested them by that date. 42 U.S.C. § 1973ff-1(a)(8). For the November 2, 2010 Federal general election, September 18, 2010 was the deadline for States to transmit such ballots. After that date, the State informed the Department that several Kansas counties failed to send ballots by the deadline. On that basis, the Department of Justice notified Kansas that the State was in violation of UOCAVA for the upcoming Federal general election, and a lawsuit to enforce UOCAVA had been authorized. The State has now certified that 7 Kansas counties failed to transmit ballots by the September 18 deadline. The Kansas Secretary of State directed the counties in which a violation of UOCAVA occurred to take remedial action.

The United States and the State, 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 Kansas's UOCAVA voters will have sufficient opportunity to receive the absentee ballots they have requested and submit marked absentee ballots in time for them to count in the November 2, 2010 Federal general election and in future Federal general elections. As consideration for this Agreement, the United States has agreed to forgo litigation, subject to compliance with the terms of this Agreement. The parties have negotiated in good faith and hereby enter into this Agreement as an appropriate resolution of the UOCAVA claim raised by the United States.

**B. Recitals**

The United States and the State stipulate and agree that:

1. The United States District Court for the District of Kansas has jurisdiction to enforce provisions of UOCAVA, 42 U.S.C. §§ 1973ff to 1973ff-7, and the Federal Court would have jurisdiction over an action brought by the United States to

enforce the terms of this Agreement pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201(a).

2. The United States Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4.
3. The State of Kansas is responsible for complying with UOCAVA, and ensuring that validly-requested absentee ballots are sent to UOCAVA voters in accordance with its terms. 42 U.S.C. § 1973ff-1.
4. Chris Biggs is the Secretary of State of the State of Kansas. In that position, Secretary Biggs is the chief state election official for Kansas, and is responsible for administering the Kansas military and overseas voters act ("Kansas act"), which implements UOCAVA. *See* KAN. STAT. ANN. §§ 25-2504, 25-1223, 25-1226. The Secretary of State is authorized to "to make such rules and regulations as he may deem necessary to carry out the provisions" of the Kansas act. KAN. STAT. ANN. § 25-1225. Secretary Biggs is authorized by Kansas law to "utilize the services of such election officials and county officers for such purposes and to such extent as the secretary of state may deem appropriate" to fulfill his duties. KAN. STAT. ANN. § 25-1223(b). The "intent and purpose" of the Kansas act is "to provide election procedure which will conform with that prescribed by the federal act [UOCAVA]." KAN. STAT. ANN. § 25-1226.
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. 42 U.S.C. § 1973ff-1(a)(8)(A).
6. Kansas election officials received requests for absentee ballots for the November 2, 2010 Federal general election from voters who are entitled to vote pursuant to the provisions of UOCAVA by September 18, 2010.
7. In 7 of the State's 105 counties, election officials failed to send ballots by September 18 to UOCAVA voters who had requested them by that day. Specifically, Marshall (4 ballots) and Finney (24 ballots) Counties did not send their ballots until September 20, 2010; Jackson (19 ballots), Hamilton (2 ballots), and Wabaunsee (5 ballots) Counties did not send their ballots until September 22, 2010; Ellis County did not mail its 26 ballots until September 24, 2010; and Stevens County did not mail its 1 ballot until October 4, 2010.
8. Under Kan. Stat. Ann. § 25-1221, absentee ballots cast by UOCAVA voters in Kansas must be received by the close of polls on Election Day. *See* KAN. STAT. ANN. § 25-1221. The Secretary of State maintains that it is within his authority as the State's chief election officer to extend the State's deadline for return of ballots if doing so is necessary to remedy a violation of Federal law.

9. The State's failure to transmit absentee ballots to UOCAVA voters by the 45th day before the November 2, 2010 Federal general election constitutes a violation of 102(a)(8)(A) of UOCAVA. The United States asserts that, absent the actions described herein to remedy the admitted violation, United States citizens protected under UOCAVA would be deprived of a sufficient opportunity to vote in that election, in violation of UOCAVA.
10. The United States and the Office of the Kansas Secretary of State have engaged in extensive discussions following the September 18th deadline and have reached an agreement on a series of actions to be taken by the State to ensure compliance with Section 102(a)(8)(A) of UOCAVA and to provide UOCAVA voters sufficient opportunity to receive, mark and return the absentee ballots they have requested in time for them to count in the November 2, 2010 Federal general election. It is the intent of the State and the United States that the State immediately undertake and complete the actions set forth in this Agreement.

**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 shall take all necessary actions to ensure that each of its counties provides at least 45 days for the transmission, execution, and return of ballots to all qualified UOCAVA voters who requested absentee ballots on or before September 18, 2010. Those actions include, but are not limited to, the following: (a) issuing directives to officials in each county where ballots were sent late to delay the completion of their canvassing until at least 45 days after the absentee ballots were sent, and (b) ordering election officials in such counties to count as validly cast ballots in the November 2, 2010 Federal general election all ballots from those UOCAVA voters who requested them by September 18, 2010, provided such ballots are executed and sent by November 2, 2010, received by the date of the applicable extended receipt deadline, and are otherwise valid.
2. The State shall 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 voters. Such notice 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 November 2, 2010; (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.
3. The State shall provide a report to the United States Department of Justice no later than October 18, 2010 concerning the transmittal of UOCAVA absentee ballots. The report shall (a) certify when ballots were transmitted in all counties that failed to transmit ballots by September 18, 2010, to eligible

UOCAVA voters who had requested them by that date, and (b) certify that in each of the State's other counties, absentee ballots were transmitted on or before September 18, 2010, to all eligible UOCAVA voters whose applications for ballots were received by that date. The report shall specify for each county that transmitted ballots after the deadline the number of requests received, the number of UOCAVA absentee ballots transmitted, and the method of transmittal.

4. The State shall provide a report to the United States Department of Justice no later than December 17, 2010, concerning the absentee ballots sent to UOCAVA voters and in each county that failed to transmit ballots by the September 18<sup>th</sup> deadline. For each such county, the report will set forth the following information regarding voters who were sent ballots late ("affected UOCAVA voters"), categorized by uniformed services overseas voters, uniformed services voters within the United States, and overseas civilian voters:

- a. The number of absentee ballots from affected UOCAVA voters received before the close of the polls on November 2, 2010 and counted;

- b. The number of absentee ballots from affected UOCAVA voters received and counted after the close of the polls on November 2, 2010 but prior to the expiration of the extended deadline for receipt of ballots;

- c. The number of absentee ballots from affected UOCAVA voters received after the extended deadline for receiving them;

- d. The number of absentee ballots from affected UOCAVA voters received but that were not counted in the general election for Federal office for reasons other than late receipt;

- e. The number of ballots from affected UOCAVA voters that were not returned; and

- f. The number of ballots from affected UOCAVA voters that were returned as undeliverable by the United States Postal Service.

5. The State shall take all necessary actions to ensure that its UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including determining the cause of the late mailed ballots for the November 2, 2010 Federal general election and taking any administrative or other actions needed to reduce the potential for future UOCAVA violations arising from Kansas's or the individual counties' election practices. The

parties agree to confer on the progress of these efforts, and the State shall provide a status report to the United States by March 15, 2011.

**D. Term**

The State's obligations under this Agreement shall commence immediately and shall expire in their entirety on June 30, 2011.

**E. Enforcement**

The terms of this Agreement are intended to resolve the violation of Section 102(a)(8) of UOCAVA arising from the failure to mail ballots by September 18, 2010 to eligible UOCAVA voters who had requested them by that date. In the event the State fails in any manner to comply with the terms of this Agreement, this Agreement is enforceable immediately in United States District Court for the District of Kansas as set forth above. In such event, the United States also may take any other actions required 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 which are the 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 the subject of this Agreement.

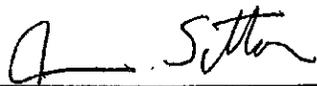
**F. General**

This Agreement is binding on the parties and their successors in office. The parties agree to the admissibility of this Agreement without objection in any subsequent proceeding for its enforcement or other action filed to enforce Section 102(a)(8) of UOCAVA.

The undersigned enter into this Agreement this 15<sup>th</sup> day of October, 2010:

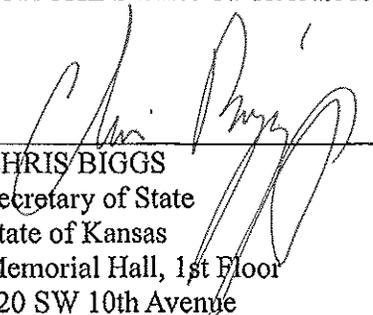
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