

AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND
THE SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS
REGARDING THE DATA REPORTING REQUIREMENTS OF THE UNIFORMED AND
OVERSEAS CITIZENS ABSENTEE VOTING ACT

A. Introduction.

This agreement is entered into between the United States of America, through the U.S. Department of Justice ("United States"), and the Commonwealth of Massachusetts, through the Secretary of the Commonwealth, William Francis Galvin ("Secretary"), to facilitate the compilation and reporting of data relative to voters covered under the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA") as amended by the Help America Vote Act in 2002, which provides as follows:

Not later than 90 days after the date of each regularly scheduled general election for Federal office, each State and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission (established under the Help America Vote Act of 2002) on the combined number of absentee ballots transmitted to absent uniformed services voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election, and shall make such report available to the public.

42 U.S.C. § 1973ff-1(c) (2000 & Supp. V 2005).

On or about September 22, 2008, the United States alerted the Secretary that, based upon information from the Election Assistance Commission ("EAC"), the Commonwealth and units of local government administering the 2006 general election within it, had not reported and published "the combined number of absentee ballots transmitted to uniformed services voters and overseas voters," as defined in § 1973ff-6 ("UOCAVA voters"), or the "combined number of such ballots which were returned by such voters and cast in the election."

The Secretary immediately looked into the matter and determined that some information had been provided, but agreed that it was incomplete. On Wednesday, September 24, 2008, and on October 10, 2008, the Secretary forwarded to the United States and the EAC some updated 2006 UOCAVA information obtained from the municipalities.

On October 7, 2008, the Secretary sent a broadcast email to all local election officials regarding their obligations to comply with § 1973ff-1(c). The Secretary also provided detailed instructions on how to collect UOCAVA data as well as a proposed form to record the data.

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 Congress, the State, and the public have available the information regarding how many absentee ballots were transmitted, returned, and cast by

litigation, 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. Both parties share the goal of achieving future compliance with § 1973ff-1(c) to the fullest extent possible.

B. Recitals.

The United States and the Secretary stipulate and agree that:

1. The United States District Court has jurisdiction to enforce provisions of the UOCAVA, 42 U.S.C. §§ 1973ff to ff-6 (2000 & Supp. V 2005), 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. There are 351 local units of government (cities and towns) in Massachusetts that are statutorily responsible for locally administering federal elections. Each local unit of government is also responsible for receiving and processing voter registration applications and absentee ballot applications, including those from UOCAVA voters.
3. The Commonwealth of Massachusetts is subject to the requirements of the UOCAVA. The reporting requirements of § 1973ff-1(c) were effective for the 2004 and 2006 general elections, and are effective for the 2008 general election, and subsequent federal general elections.
4. Compliance with the reporting requirements of § 1973ff-1(c) provides the Congress and the public with the data necessary to ascertain the effectiveness of procedures relating to the casting of ballots by UOCAVA voters as defined in § 1973ff-6.
5. Under Massachusetts law, the Secretary of the Commonwealth is the chief election officer for Massachusetts. Massachusetts General Laws chapter 56, section 60, provides as follows:

Whenever the state secretary determines, after consulting with the local official involved, that a pattern of conduct, or a standard, practice, or procedure of a city or town clerk, board of registrars of voters, or any other municipal or district officer or board upon whom a duty is imposed is contrary to chapters fifty to fifty-four, inclusive, or any other general or special law concerning administration of elections, he may order such local official to comply with law. The attorney general may enforce the order by civil action. The state secretary may adopt procedural regulations governing administrative proceedings under this section. The remedy provided by this section shall not in any way limit the availability of judicial remedies to any person, official, commission or board.

6. It is the goal of both parties to facilitate compliance with the reporting requirements of the UOCAVA by implementing a data collection procedure for local election officials in Massachusetts that captures accurate information regarding how many absentee ballots have been transmitted, returned, and cast by UOCAVA voters.

C. Agreements.

1. The Secretary, for the November 4, 2008, federal general election, and subsequent regularly scheduled federal general elections, shall make good faith efforts, in the exercise of his authority under Massachusetts law, to ensure that the State, and all units of local government within the State, which locally administer the elections, collect data required by the UOCAVA, 42 U.S.C. § 1973ff-1(c), to wit, “the combined number of absentee ballots transmitted to absent uniformed service voters and overseas voters for the election and the combined number of such ballots which were returned by such voters and cast in the election.” Such efforts will include developing UOCAVA reporting forms and instructions and distributing them to the units of local government that locally administer the election (completed for the 2008 federal general election), issuing reminders and directives to local election officials following the election, and issuing orders to specific units of local government if they fail to return the forms with the UOCAVA data to the Secretary in a timely manner. The Secretary and his Office shall have the responsibility to compile UOCAVA data reported to it by the units of local government and to submit a report containing that information to the EAC, but the Secretary and his Office will have no obligation to perform the duties of the units of local government which locally administer the election, such as reviewing and counting the absentee ballots transmitted to UOCAVA voters and/or returned to any unit of local government or determining the number of ballots cast by UOCAVA voters in the election.
2. Section 1973ff-1(c) provides that “each state and unit of local government which administered the election shall (through the State, in the case of a unit of local government) submit a report to the Election Assistance Commission” not later than 90 days after the date of a regularly scheduled general election for Federal office. The provision imposes responsibilities upon the Commonwealth (and the Secretary) and upon the 351 cities and towns within Massachusetts that locally administer the elections. The Secretary is responsible for complying with the UOCAVA by ensuring that information collected by units of local government and reported to the Secretary under § 1973ff-1(c) is transmitted to the EAC not later than 90 days after the date of a regularly scheduled general election for Federal office (or the date established by the EAC, whichever comes later). The parties acknowledge that Pub.L. 107-252, Title VII, § 703(b), Oct. 29, 2002, 116 Stat. 1724, provided that: “The Election Assistance Commission, working with the Election Assistance Commission Board of Advisors and the Election Assistance Commission Standards Board, shall develop a standardized format for

the reports submitted by States and units of local government under section 102(c) of the Uniformed and Overseas Citizens Absentee Voting Act (as added by subsection (a)), and shall make the format available to the States and units of local government submitting such reports.” 42 U.S.C. § 1973ff-1 note. The Secretary agrees that he will direct units of local government which locally administer the elections in Massachusetts to provide such information as is requested on the EAC’s specified format in time for the Secretary to aggregate and submit it to the EAC by the deadline established by the Commission.

3. The Secretary shall develop and approve procedures for data reporting whereby the local election officials shall capture and record the required UOCAVA data. The Secretary shall, specifically, remind the units of local government which locally administer the federal general election within the Commonwealth, in writing in advance of the elections, of the reporting requirements of § 1973ff-1(c), and of the EAC report, regarding absent uniformed services voters and overseas voters (and shall contemporaneously provide a copy of that writing to the United States), and shall issue a follow-up communication to such local officials (with a copy to the United States) promptly following the election. The Secretary shall include a data reporting form with such communications. The United States acknowledges that the Secretary has already issued pre-election reminders for the upcoming election scheduled for November 4, 2008. The Secretary shall undertake such obligations in this paragraph for subsequent federal general elections.
4. The Secretary shall issue information and instructions to local election officials requiring them to capture, record, and report the information required by the UOCAVA. For regularly scheduled federal general elections subsequent to the November 4, 2008, election, the Secretary shall develop and implement instructions and reporting forms and shall provide training to local election officials by telephone conference call, conference, or some other means to facilitate the collection of data required by § 1973ff-1(c) by the units of local government and their reporting of such data to the EAC through the Office of the Secretary within 90 days following the date of the election (or the date established by the EAC, whichever comes later). The Secretary shall certify to the United States, prior to each such federal general election, that each local election official (or a representative thereof) participated in this training or has been contacted by the Secretary’s office.
5. It is the intent of the parties that the Secretary will use good faith efforts, within the scope of his authority under existing state law, towards the goal of capturing, obtaining, and reporting the data required by § 1973ff-1(c). Such efforts will include developing UOCAVA reporting forms and instructions and distributing them to the units of local government that locally administer the election (completed for the 2008 federal general election), issuing reminders and directives to local election officials following the election, and issuing orders to specific units of local government if they fail to return the forms with the

UOCAVA data to the Secretary in a timely manner. The Secretary and his Office shall have the responsibility to compile UOCAVA data reported to it by the units of local government and to submit a report containing that information to the EAC, but the Secretary and his Office will have no obligation to perform the duties of the units of local government which locally administer the election, such as reviewing and counting the absentee ballots transmitted to UOCAVA voters and/or returned to any unit of local government or determining the number of ballots cast by UOCAVA voters in the election. The Secretary may demonstrate compliance with this Agreement by exercising, or pursuing, all available constitutional and statutory powers over the collection of information by local election officials. Compliance with this Agreement, in the event that the Secretary's report to the EAC is incomplete, may be ascertained by the extent to which the Secretary utilizes the full extent of powers under state law to perform the types of tasks contemplated above to facilitate compliance with § 1973ff-1(c) and the goal of capturing, recording, and reporting the required data. The Secretary shall notify the United States of the reporting status of all jurisdictions.

6. The Secretary shall provide to the United States copies of all reports that he makes to the EAC regarding ballots transmitted to or cast by absent uniformed services voters and overseas voters, contemporaneously with the transmittal of such reports to the EAC. The Secretary shall also make such reports available to the public.
7. Upon specific request of the United States, the Secretary shall provide a copy of all written communications by the Secretary evidencing an effort to fulfill his obligations under this Agreement. Upon specific request of the United States, the Secretary shall provide the underlying data provided to the Secretary by the units of local government which locally administer the election.
8. If the United States acquires information that there is a problem with the information submitted by the Commonwealth to the EAC pursuant to § 1973ff-1(c), it shall so advise the Secretary and the parties shall engage in good faith efforts to resolve the matter subject to the terms of section F. of this Agreement.

D. Term and Amendments.

The obligation to provide the United States a copy of all data reported, and all certifications required to be made, shall expire on February 7, 2013. The obligation to provide the United States, upon request of the United States, all communications by the Secretary evidencing an effort to fulfill obligations pursuant to this Agreement, under section C. paragraph 7, shall expire on August 1, 2013. In the event that § 1973ff-1(c) is amended during the pendency of this Agreement, the Parties shall in good faith seek to agree upon a modification of this Agreement to conform this Agreement to said changes. Unless earlier amended in writing, this Agreement shall expire in its entirety on October 10, 2013.

E. Notices.

Notices and documents required to be sent pursuant to this Agreement may be sent by the parties by electronic mail or United States Postal Service addressed to the party or their counsel.

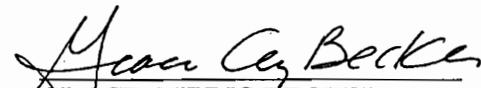
F. Remedy.

If the United States acquires evidence of noncompliance or of a failure to substantially fulfill the Secretary's obligations under this Agreement, it shall so advise the Secretary and the parties shall engage in good faith efforts to resolve the matter for at least ten (10) business days prior to the United States commencing any court action, unless the United States acquires evidence of a substantial breach of such obligations less than thirty (30) days before a regularly scheduled general election for federal office, in which case the United States shall provide such notification and engage in such efforts but shall not be limited by the 10-day negotiation condition precedent to suit set forth above. A substantial breach for purposes of this provision includes, but is not necessarily limited to, a failure of the Secretary to implement procedures which facilitate the collection of the data required by § 1973ff-1(c), as provided in section C. paragraphs 3, 4, and 5 of this Agreement. In any litigation arising out of an alleged breach of this Agreement, each party shall bear all of their own costs, expenses, expert fees and attorneys' fees.

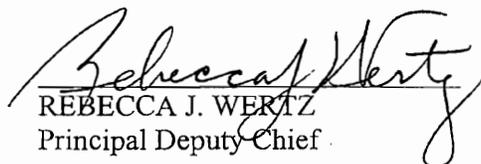
G. General.

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. No oral modification or oral waiver of this Agreement shall be effective.

The undersigned enter into this Agreement this 21st day of October, 2008:


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