

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No.
	)	1:04-CV-0830
THE COMMONWEALTH OF	)	
PENNSYLVANIA; EDWARD G.	)	Hon. Yvette Kane
RENDELL, Governor of the Commonwealth;	)	
of Pennsylvania; and PEDRO A. CORTES,	)	
Secretary of the Commonwealth of Pennsylvania,	)	
	)	
Defendants.	)	Filed Electronically

**MEMORANDUM OF UNDERSTANDING BETWEEN THE COMMONWEALTH OF PENNSYLVANIA, ET AL. AND THE UNITED STATES**

This Memorandum of Understanding (“MOU”) between the United States Department of Justice (“United States”) and the Commonwealth of Pennsylvania, Governor Edward G. Rendell, and Secretary of the Commonwealth Pedro A. Cortes (collectively, “Defendants”) is an agreement to resolve the above-captioned civil action under the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §§ 1973ff *et seq.* (“UOCAVA”). This MOU is to be annexed to, incorporated in, and enforceable under, the Stipulation and Order of Dismissal signed on this date and submitted to the Court by counsel for the parties.

The parties set forth their mutual understanding and agreement as follows:

1. The General Assembly of Pennsylvania, during its 2005 session, passed Senate Bill 999, which was signed into law by Governor Rendell on May 12, 2006 and became effective July 1, 2006. This law, now referred to as Act 45, amends several provisions of Pennsylvania’s Election Code, including the deadline for UOCAVA voters to return their absentee ballots.

Specifically, Section 12 of Act 45 amends Section 1308 of the Pennsylvania Election Code (25 P.S. § 3146.8) to provide that absentee ballots cast by qualified absentee electors defined under Section 1301 (a)-(h) of the Pennsylvania Election Code (25 P.S. § 3146.1(a)-(h)), which includes UOCAVA voters, will be canvassed if they are received in the office of the county board of elections no later than 5:00 p.m. on the seventh day following an election, and postmarked no later than the day immediately preceding the election.

2. In effect, Act 45 extends the deadline for receiving absentee ballots from UOCAVA voters to seven days after an election, and is designed to ensure long-term compliance with UOCAVA by Pennsylvania and its subdivisions.

3. The United States believes that the alteration of the deadline embodied in Act 45 should provide UOCAVA voters with sufficient time to receive, cast and return their absentee ballots. However, the United States has lingering concerns regarding the Commonwealth's ability to ensure that officials in each of its 67 counties, who are responsible for mailing absentee ballots, comply with UOCAVA and related requirements of Pennsylvania law. Because enforcement of the requirements of UOCAVA depends on timely and accurate information about the extent of compliance in each of the Commonwealth's political subdivisions, the parties have agreed that prior to each federal election through November 2008 the Commonwealth will implement the following procedures:

A. The chief election administrator of each of the Commonwealth's 67 counties shall certify in writing to the Pennsylvania Department of State, no later than 44 days prior to each federal election, that absentee ballots have been mailed to all qualified absentee electors protected by UOCAVA whose applications for such

ballots have been received and approved by that date. Such certifications shall be in a form decided upon by the parties and shall include information regarding: (1) the number of absentee ballots requested by qualified UOCAVA voters or otherwise described by sections 1301(a)-(h) of the Code; (2) the number of absentee ballots mailed to those voters; and (3) the number of special absentee write-in ballots, if any, sent to such voters. The Commonwealth shall provide copies of these certifications, along with a sufficient summary thereof, to the United States on or before the 40th day before an election.

B. The Secretary of the Commonwealth will require a supplemental written certification from the chief election administrator of each of the 67 counties by the 35th day prior to each federal election that absentee ballots or special write-in ballots have been mailed to all qualified UOCAVA voters whose applications have been received and approved by that date. Such certifications shall be in the form decided upon by the parties and shall include the information set forth in subparagraph A, *supra*. The Commonwealth shall provide copies of these certifications, along with a sufficient summary thereof, to the United States by the 32nd day prior to the election.

4. The Commonwealth will take all necessary steps to ensure that each of its 67 county boards of elections has delivered or mailed absentee ballots or special write-in absentee ballots to all UOCAVA voters, who have made timely application therefor approved by the county board of elections, no later than 45 days before a federal election. However, if there is evidence after the 45th day before an election that any county boards of elections have failed to

deliver or mail absentee ballots (or special write-in absentee ballots) to all UOCAVA voters whose applications were received and approved by that date, Defendants agree that they will not oppose a motion by the United States for special injunctive relief prior to that election. The parties further agree that the Court may order one or more of the following remedies, depending upon the circumstances presented:

- A. An appropriately tailored extension of the deadline for receipt of absentee ballots beyond the seven-day extension effectuated by Act 45, provided that such ballots have been postmarked on the day before the applicable federal election.
- B. In any primary or special federal election, an order requiring the Commonwealth's county boards of elections to accept a Federal Write-in Absentee Ballot (FWAB) from any qualified UOCAVA voter for the canvassing and counting of votes cast for any federal office for which the qualified absentee elector is eligible to vote for a candidate.
- C. An order requiring that official absentee ballots, or special write-in absentee ballots if official absentee ballots are not then available, be transmitted by the county boards of elections to qualified UOCAVA voters by means other than regular United States mail, including express mail, at the expense of Defendants or the expense of the county board of elections, as appropriate.
- D. An order requiring that the Commonwealth and the county boards of elections take appropriate steps to make available to qualified absentee electors protected by UOCAVA other means of returning absentee ballots or special write-in

absentee ballots, including express mail, at the expense of Defendants or the county board of elections, as appropriate.

If the United States seeks other remedies not enumerated above, the Commonwealth reserves the right to object to those remedies. The parties further agree that any relief sought under this paragraph will include an order requiring that Defendants, at their expense or the expense of the county boards of elections as appropriate, undertake a public information campaign to notify voters of the relief afforded, including individual actual notice where circumstances permit.

5. This MOU is binding on the parties, their successors in office, employees, agents, assigns, and all persons acting on their behalf.

6. This MOU shall remain in effect until the final certification of the general election of November 4, 2008, or for any extended duration pursuant to a written agreement by the parties.

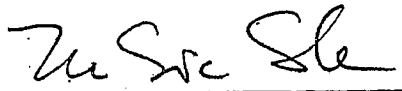
7. The Court shall retain jurisdiction over this matter until final certification of the general election of November 8, 2008, to enforce the terms of this agreement.

Dated this 27th day of July, 2006.

For the Plaintiff  
United States of America:

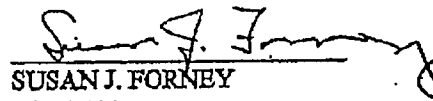
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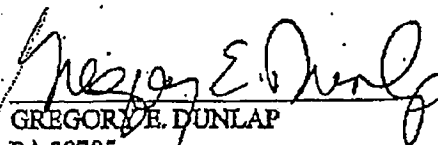
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CERTIFICATE OF SERVICE

I certify that on this 28th day of July, 2006, I caused a copy of the foregoing to be delivered by electronic transmission to counsel for the defendants as follows:

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