

**United States Department of Justice  
Uniformed and Overseas Citizens Absentee Voting Act  
Annual Report to Congress  
2010**

**I. Summary**

On October 28, 2009, the President signed into law the Military and Overseas Voter Empowerment (MOVE) Act, Pub. L. No. 111-84, 123 Stat. 2190 (2009), which amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). Protecting the rights of military and overseas voters to cast their ballots and have their votes counted is one of the highest priorities of the Department of Justice (Department), and the Department strongly supports the goals of this landmark legislation. Since the MOVE Act took effect, the Department has devoted significant resources to monitoring compliance with the law and to pursuing enforcement actions where necessary.

For the November 2, 2010 Federal general election, the Department actively monitored all covered states, territories, and the District of Columbia to ensure compliance with the MOVE Act. In April 2010, the Department sent letters to all covered jurisdictions reminding them of the MOVE Act's requirements and requesting information about their plans for complying with the law. And as described below, the Department obtained court orders, court-approved consent decrees, or out-of-court letter or memorandum agreements in fourteen jurisdictions (eleven states, two territories, and the District of Columbia). Each of these resolutions ensured that military and overseas voters would have at least a 45-day period to receive, mark, and return their ballots, or ensured they would be provided expedited mailing or other procedures to provide sufficient opportunity for ballots to be returned by the jurisdiction's ballot receipt deadline. After taking action against each of these fourteen jurisdictions, the Department actively continued to monitor compliance with the court orders and agreements it obtained.

The referenced enforcement actions included the Department's swift negotiation of resolutions to remedy or avoid MOVE Act violations in the six jurisdictions in which requests for a waiver of the 45-day advance mailing requirement were denied by the Department of Defense (DoD). The Department also filed a lawsuit against one jurisdiction after election officials failed to send thousands of ballots by the deadline approved as a condition of receiving an undue-hardship waiver. In addition, as noted above, the Department monitored whether the remaining states and territories – that is, those that did not seek a waiver – timely transmitted ballots to military and overseas voters. When formal action was necessary to protect UOCAVA voters, the Department filed lawsuits or obtained out-of-court agreements to allow military and overseas voters sufficient opportunity to receive and return their ballots in time to be counted.

As a result of the Department's actions, thousands of military and overseas voters had a reasonable opportunity to cast their ballots this year despite the failure of some election officials to timely send their ballots. In the coming year, the Department will assess the specific causes of ballot mailing delays for the 2010 Federal general election, and will evaluate the need for changes in state laws or procedures to ensure compliance with UOCAVA for future Federal elections.

## **II. Background**

UOCAVA, enacted in 1986, requires that states and territories allow active duty members of the United States uniformed services and merchant marine, their spouses and dependents, and American citizens residing outside the United States to register and vote absentee in elections for Federal offices. UOCAVA was strengthened significantly in 2009 when Congress passed the MOVE Act to expand the protections for individuals eligible to vote under its terms. Most of the new requirements of the MOVE Act went into effect for the November 2, 2010, Federal general election.

The Secretary of Defense is the Presidential designee with primary responsibility for implementing the Federal functions mandated by UOCAVA, and the Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as may be necessary to carry out the provisions of the statute. 42 U.S.C. § 1973ff(a); 42 U.S.C. § 1973ff-4(a). The Attorney General has assigned responsibility for prosecuting violations of UOCAVA to the Civil Rights Division, and the Division's Voting Section handles these enforcement actions. Since UOCAVA was enacted in 1986, the Voting Section has initiated and resolved numerous cases to enforce UOCAVA.

Under the MOVE Act amendments, UOCAVA requires that the Attorney General submit an annual report to Congress by December 31 of each year on any civil action brought under the Attorney General's enforcement authority under UOCAVA during the preceding year. 42 U.S.C. § 1973ff-4(b). The Department filed its first report under this provision in 2009.

## **III. Enforcement Actions by the Attorney General in 2010**

As noted above, in 2010, the Attorney General initiated litigation or out-of-court agreements to enforce the MOVE Act amendments to UOCAVA in 11 states, 2 territories, and the District of Columbia. In circumstances where the remedy for UOCAVA violations could not be achieved without court action, the Department filed litigation to obtain court-ordered relief. Where states possessed the authority to take the necessary steps to achieve compliance or adequate remedial measures, the Department negotiated resolution of the disputes without the need for litigation. With respect to all the court orders and agreements, the Department is engaged in ongoing monitoring and evaluation of the effectiveness of the remedies adopted and in the coming year will be assessing the need for changes in the jurisdictions' state laws or administrative procedures to ensure compliance with UOCAVA for future Federal elections. Copies of the complaints, agreements, and orders referenced herein are attached to this report.

### **A. Enforcement Actions Following Denial of Undue-Hardship Waivers**

One of the significant UOCAVA mandates added by the MOVE Act requires states to transmit validly-requested absentee ballots to UOCAVA voters no later than 45 days before a Federal election when the request has been received by that date, except where the state has been granted an undue-hardship waiver for that election pursuant to the Act. 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 Secretary of Defense. 42 U.S.C. § 1973ff-1(g).

A waiver applies only to the 45-day advance ballot transmission requirement, and only to the election for Federal office for which it is submitted. 42 U.S.C. § 1973ff-1(g) & (g)(4). Under the Act, the only issues that create an undue hardship for the state are where 1) the state's primary election date prohibits it from complying; 2) the state has suffered a delay in generating ballots due to a legal contest; or 3) the state's constitution prohibits compliance by the state. 42 U.S.C. § 1973ff-1(g)(2)(B). States seeking a waiver must submit a comprehensive plan to the Secretary of Defense, and to qualify for a waiver, the plan must ensure UOCAVA voters have sufficient time to receive absentee ballots that they have requested and to submit their marked ballots in time to have those ballots counted in the election for Federal office. 42 U.S.C. § 1973ff-1(g)(2)(A).

The deadline for requesting a waiver of this requirement in 2010 was August 4 (90 days before the election), except where the grounds for the waiver request were caused by a legal contest. The statute required DoD to approve or deny the request, after consulting with the Attorney General, not later than August 29 (65 days before the election). 42 U.S.C. § 1973ff-1(g)(3).

Following enactment of the MOVE Act, the Department consulted regularly with the Federal Voting Assistance Program at DoD (FVAP), the office assigned to review states' undue-hardship requests, concerning the waiver process and standards for determining whether a waiver should be granted. As noted above, in April of this year, the Department sent letters to every state and territory seeking to determine its plans for coming into compliance with the MOVE Act by the November 2010 general election, and reminding them of the Act's 45-day ballot transmission requirement and procedures governing requests for undue-hardship waivers. The Department worked closely with FVAP during consideration of the pending waiver requests, and participated in joint telephone conferences with state officials concerning their applications.

Twelve states applied for waivers for the November 2, 2010 Federal general election. All twelve states sought a waiver based on the date of the primary election; no waiver requests based on legal contests were received this year. One state, Maryland, subsequently withdrew its request for a waiver (representing that it had determined it could meet the 45-day mailing deadline), and the Secretary of Defense thus made no determination on Maryland's waiver application. On August 27, 2010, DoD issued the following determinations on the remaining eleven waiver applications:

- Denied Waivers (six): Alaska, Colorado, the District of Columbia, Hawaii, the U.S. Virgin Islands, and Wisconsin.
- Approved Waivers (five): Delaware, Massachusetts, New York, Rhode Island, and Washington.

On the day DoD issued these waiver determinations, and on the same telephone calls in which DoD advised the six jurisdictions of their waiver denials, the Voting Section advised these states that the Assistant Attorney General for the Civil Rights Division had authorized the filing of litigation, if necessary, to enforce compliance with UOCAVA's 45-day mailing requirement. Immediately thereafter, the Voting Section sent formal notice letters to these six jurisdictions and

began negotiations with officials in the six jurisdictions to achieve appropriate resolutions. As a result of these enforcement efforts, the Department filed a lawsuit against Wisconsin (resolved by a consent decree filed with the complaint), and reached out-of-court agreements with the remaining five jurisdictions to remedy the violations. The successful resolution for each of these jurisdictions is outlined below.

- Alaska: On September 3, 2010, the Department and Alaska reached an agreement in response to the denial of its waiver request. Alaska's primary election was August 24, 2010. DoD's waiver determination letter stated that although the state had shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, Alaska's proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. The Department's negotiations with Alaska officials resulted in an agreement by the State to expedite elements of its candidate certification procedures for the primary election so that it was able to send out an official absentee ballot to all UOCAVA voters no later than September 18, 2010, the 45th day before the general election, thus ensuring eligible military and overseas voters sufficient time to receive, cast, and return their ballots and to have their votes counted. Alaska also agreed to update the Department on the ballot certification status and provide a report on the ballots mailed to UOCAVA voters.
- Colorado: On September 16, 2010, the Department signed a Memorandum of Agreement with Colorado. Colorado's primary election was August 10, 2010. DoD's waiver determination letter stated both that Colorado had not shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, and that its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. Under the Agreement, Colorado was required to take specific steps to ensure that each of its 64 counties sent an official absentee ballot to UOCAVA voters no later than September 18, 2010, the 45th day before the election. The required measures included issuing directives to the counties, monitoring their progress, providing direct assistance to any county that needs it, and if necessary, taking enforcement action to obtain compliance. Under the Agreement, the state committed to taking steps to ensure compliance in future Federal elections and to confer with and provide a report to the Department of Justice on those efforts.
- District of Columbia: On September 17, 2010, the Department signed a Memorandum of Agreement with the District of Columbia. The District's primary election was September 14, 2010. DoD's waiver determination letter found that although the District had shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. The Department's negotiations with District officials resulted in an agreement under which they would send absentee ballots to military and overseas voters no later than October 4, 2010, and provide additional time, until November 19, 2010, for receipt of the ballots. The District passed

emergency rules embodying these new deadlines to ensure that eligible military and overseas voters would have at least 45 days to receive, cast, and return their ballots in time for them to be counted. Earlier this year, the Council of the District of Columbia adopted a “Sense of the Council Primary Election Timing Resolution of 2010” acknowledging that the District needed to enact legislation to move its primary election for Federal offices to a date no later than the first Tuesday of the first full week of August, beginning in 2012. Under the Agreement, the District committed to taking all necessary steps to ensure compliance in future Federal elections and to confer with and provide a report to the Department of Justice on those efforts.

- Hawaii: On September 16, 2010, the Department signed a Memorandum of Agreement with Hawaii. Hawaii’s primary election was on September 18, 2010, the 45th day before the November 2, 2010 Federal general election. DoD’s waiver determination letter stated that although the State had shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. To ensure that the State’s military and overseas voters would have sufficient time to receive, cast, and return their ballots in time for them to be counted in the November 2, 2010 election, the Agreement required Hawaii to send out ballots by express delivery service no later than September 24, 2010, and to provide voters with the means to return their completed ballots by express delivery free of charge. Earlier this year, Hawaii enacted legislation, effective on January 1, 2011, that moves Hawaii’s primary date to the second Saturday in August in every even-numbered year to help ensure compliance with UOCAVA’s 45-day advance ballot mailing requirement in future Federal general elections.
- U.S. Virgin Islands: On September 2, 2010, the Department reached an agreement with the U.S. Virgin Islands to address the denial of its waiver request. The Virgin Islands had a scheduled Federal primary election on September 11, 2010, but there was not a contested primary for the Federal office of Delegate to Congress this year. DoD’s waiver determination letter stated that the Virgin Islands had not shown an undue hardship to transmit ballots 45 days before the November 2, 2010 election, and that its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. Under the agreement, the Virgin Islands committed to sending absentee ballots for the Federal office on or before September 18, 2010, the 45th day before the election.
- Wisconsin: On September 10, 2010, the Department filed a lawsuit against Wisconsin. *United States v. State of Wisconsin*, No. 3:10-cv-00518 (W.D. Wis.). The lawsuit was resolved by a Consent Decree that was entered by the Federal district court on September 15, 2010. Wisconsin’s primary election was September 14, 2010. DoD’s waiver determination letter stated that although Wisconsin had shown an undue hardship to transmit ballots 45 days before the

November 2, 2010 election, its proposed comprehensive plan did not afford sufficient time for UOCAVA voters to receive and submit absentee ballots in time to have them counted. The Consent Decree required Wisconsin officials to take certain steps to ensure that all local election offices in the State sent absentee ballots to military and overseas voters by no later than October 1, 2010, and provided for additional time, until November 19, 2010, for receipt of absentee ballots to ensure that eligible military and overseas voters have sufficient time to cast and return their ballots and to have them counted. The Consent Decree requires that Wisconsin take all necessary actions to ensure compliance in future Federal elections, including proposing legislation and taking administrative actions to remedy the potential UOCAVA violations arising from the primary election schedule. The State must confer with and provide a status report to the Department on those efforts.

**B. Enforcement Action for Failure to Comply with Terms of Waiver**

- New York: On October 12, 2010, the Department filed a lawsuit against New York. *United States v. State of New York*, No. 1:10-cv-1214 (N.D.N.Y.). The lawsuit was resolved by a Consent Decree, approved by the Federal district court on October 19, 2010. DoD granted New York an undue-hardship waiver based on the State's comprehensive plan, which relied on two key provisions that together created a 45-day period for UOCAVA voters to receive, mark, and return their ballots. Specifically, New York's plan required election officials to send ballots to UOCAVA voters by October 1, 2010, and accept otherwise valid ballots returned by November 15, 2010. However, numerous counties across the state, including those comprising New York City, failed to transmit UOCAVA ballots by the October 1 deadline. The Consent Decree provided additional time, until November 24, 2010, for receipt of UOCAVA ballots, and other procedures to ensure that eligible military and overseas voters would have sufficient time to cast and return their ballots and to have them counted. In addition, the Consent Decree committed New York to explore the need for future relief, including changes of law or administrative regulation, to prevent violations of UOCAVA in the future arising from the State's election schedule or practices. The State must confer with and provide a status report to the Department on those efforts.

**C. Additional Civil Actions Filed to Enforce UOCAVA**

In addition to resolving the post-waiver denial enforcement actions, the Department also initiated enforcement actions for failure to comply with the 45-day requirement in states that had not sought waivers. FVAP determined that it would monitor compliance in the five states for which waivers had been granted. In advance of the 45-day deadline, the Voting Section contacted each of the remaining states and territories to remind them again of the MOVE Act's ballot transmission deadline, to inquire whether any ballot delays were anticipated, and to request that they confirm to the Voting Section that their localities had timely transmitted their UOCAVA ballots. The Department filed the following enforcement actions for failure to timely transmit ballots in accordance with UOCAVA:

- Guam: On October 6, 2010, the Department filed a lawsuit and motion for emergency injunctive relief against the Territory of Guam. *United States v. Government of Guam*, No. 10-00025 (D. Guam). Guam had failed to send its UOCAVA ballots by the September 18, 2010 deadline, and failed to provide an electronic transmission option for receipt of ballots in accordance with UOCAVA. On October 13, 2010, after a telephonic hearing on the motion, the Federal district court entered an order granting the relief requested by the Department. The order provided additional time, until November 15, 2010, for receipt of UOCAVA ballots, to ensure that eligible military and overseas voters would have sufficient time to cast and return their ballots and to have them counted. In addition, the order required Guam to provide the option of e-mail transmission of ballots, and notice thereof, to UOCAVA voters for the November 2, 2010 election. The order also requires that Guam take all necessary actions to ensure compliance in future Federal elections, including proposing legislation and taking administrative actions to remedy the potential UOCAVA violations arising from Guam's election schedule and practices. Guam must confer with and provide a status report to the Department on those efforts.
- Illinois: On October 22, 2010, the Department filed a lawsuit against Illinois. *United States v. State of Illinois*, No. 10-cv-06800 (N.D. Ill.). The lawsuit was resolved by a Consent Decree that was entered by the Federal district court on October 22, 2010. Election authorities in numerous Illinois jurisdictions had failed to send UOCAVA ballots by the September 18, 2010 deadline, and some jurisdictions failed to transmit ballots by electronic means to UOCAVA voters who had timely requested electronic delivery of their ballots, and instead sent the ballots by postal mail. The Consent Decree provided additional time beyond the State's existing November 16, 2010 deadline – 14 days after Election Day – for receipt of UOCAVA ballots in six counties, and other measures to ensure that eligible military and overseas voters in those counties would have sufficient time to cast and return their ballots and to have them counted. The Consent Decree also extended the date by which ballots from those counties must be postmarked from November 1 to November 2, 2010. In addition, the Consent Decree required that officials send ballots to any UOCAVA voters who asked to receive their ballots electronically by the requested delivery method. Under the Consent Decree, Illinois must take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State must confer with and provide a status report to the Department on those efforts.
- New Mexico: On October 12, 2010, the Department filed a lawsuit against New Mexico. *United States v. State of New Mexico*, No. 10-cv-968 (D.N.M.). The lawsuit was resolved by a Consent Decree that was entered by the Federal district court on October 14, 2010. Election officials in several New Mexico counties had failed to send their UOCAVA ballots by the September 18, 2010 deadline. The

Consent Decree provided additional time, until November 6, 2010, for receipt of UOCAVA ballots to ensure that eligible military and overseas voters would have sufficient time to cast and return their ballots and to have them counted. The order also requires that New Mexico take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State must confer with and provide a status report to the Department on those efforts.

#### **D. Other Memorandum Agreements and Letter Agreements Obtained**

The Department also negotiated memorandum or letter agreements with four other states after the Department's inquiries revealed that some local election officials in those states had failed to send UOCAVA ballots by the September 18, 2010 deadline. In each case, the states possessed the authority to authorize extensions of the ballot receipt deadlines necessary to provide at least 45 days for transmission and return of ballots without the need for a Federal court order.

- Kansas: On October 15, 2010, the Department signed a Memorandum of Agreement with Kansas. Seven counties in Kansas had failed to send UOCAVA ballots by the September 18, 2010 deadline. Under the Agreement, to ensure that those counties provided 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, Kansas extended the ballot receipt deadlines in those counties commensurate with the delay in each of those counties in sending ballots. Under the Agreement, Kansas committed to take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State agreed to confer with and provide a status report to the Department on those efforts.
- Mississippi: On October 15, 2010, the Department reached an agreement with Mississippi. Twenty-two counties in Mississippi had failed to send UOCAVA ballots by the September 18, 2010 deadline. To resolve this violation, Mississippi's Secretary of State promulgated a temporary Administrative Rule that extended the deadline, until November 8, 2010, for the receipt of ballots from military and overseas voters in the 22 counties affected, to ensure that they would have at least 45 days to receive, cast, and return their ballots. In addition, Mississippi committed to take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots, and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State agreed to provide a status report to the Department on those efforts.

- Nevada: On October 8, 2010, the Department reached an agreement with Nevada. One county, Elko County, had failed to send its UOCAVA ballots by the September 18, 2010 deadline. Along with other measures to expedite delivery of the requested ballots, including efforts to send ballots by e-mail or expedited mail, the Nevada Secretary of State adopted an emergency regulation to provide an additional six days, until November 8, 2010, for Elko County's UOCAVA voters to return their ballots to provide eligible military and overseas voters at least 45 days to receive, cast, and return their ballots.
- North Dakota: On October 8, 2010, the Department reached an agreement with North Dakota. Thirteen counties in North Dakota had failed to send their UOCAVA ballots by the September 18, 2010 deadline. To remedy this violation, North Dakota confirmed that the canvassing boards in the affected counties agreed to meet to canvass the election results six days after the election, to provide eligible military and overseas voters at least 45 days to receive, cast, and return their ballots. In addition, North Dakota committed to take all necessary actions to ensure compliance in future Federal elections, including determining the cause of the late-mailed ballots and taking any administrative or other actions designed to prevent future UOCAVA violations arising from the State's or counties' election practices. The State agreed to provide a status report to the Department on those efforts.

#### **E. Activity in Other Litigation by the Attorney General under UOCAVA**

The Department concluded its 2008 litigation against the Commonwealth of Virginia upon the Federal district court's recent entry of a Consent Decree requiring remedial measures for future Federal elections.

- Virginia: On December 14, 2010, the Federal district court in *United States v. Cunningham*, No. 3:08-cv-709 (E.D. Va.), signed and entered a Consent Decree between the United States and Commonwealth of Virginia officials embodying a remedial program for compliance with UOCAVA in future Federal elections. Approval of this remedial agreement concludes extensive litigation initiated in 2008 to enforce UOCAVA in that year's Federal general election and to obtain relief to ensure full compliance in the future. On November 14, 2008, the Department filed a motion to intervene in *McCain-Palin 2008, Inc. v. Cunningham* (E.D. Va.) and filed a complaint alleging that Virginia election officials failed to send absentee ballots in a timely manner to military and overseas voters for the November 4, 2008 Federal general election. On October 15, 2009, the court granted summary judgment for the United States, holding that the Commonwealth violated UOCAVA by failing to timely mail absentee ballots to eligible uniformed service members and overseas citizens, and ordered the Defendants to count timely requested, late-mailed, and otherwise-valid absentee ballots from military and overseas voters that arrived within 30 days of the close of the polls on November 4, 2008. The Court permitted the parties time to negotiate agreed procedures to ensure full UOCAVA compliance in future

elections. After negotiations failed to resolve the matter, the Department filed a motion for entry of permanent relief. On September 13, 2010, the court ruled that it would take the motion for permanent relief under advisement. It held that the United States properly raised the issue of prospective relief, and rejected Defendants' argument that the case was at an end after the ruling on liability. The court ordered the parties to undertake discovery to develop the facts on the cause of Virginia's prior noncompliance, and further ordered the parties to discuss "the creation of an appropriate, functional future compliance plan."

Following discovery, further settlement discussions and mediation resulted in the agreement filed by the parties on December 10, 2010 and ordered by the court on December 14, 2010. The Consent Decree provides training, monitoring, reporting, and backup procedures to be used by Commonwealth election officials to ensure that absentee ballots are transmitted to eligible military and overseas voters no later than 45 days before a Federal election. In addition, it requires Defendants to undertake a review of operational procedures to determine the reasons for prior failures to timely transmit UOCAVA ballots and to address such failures with appropriate training.

# **ATTACHMENT**

State of Alaska

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**STATE OF ALASKA**  
**Division of Elections**  
**Office of the Lieutenant Governor**

September 3, 2010

*Sent via facsimile transmission (202) 307-3961 and U.S. mail*

Mr. Chris Herren  
Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
1800 G St., N.W.  
Washington, DC 20006

RE: Withdrawal of MOVE Act Waiver

Dear Mr. Herren:

As you requested in our conference call yesterday, I am submitting to you the division's proposal for compliance with the 45-day ballot transit time.

As we discussed, the state was able to formulate a plan to comply with the MOVE Act ballot transit time, and so Alaska no longer needs a waiver from the 45-day deadline. Under the new plan, the division will complete the state review board process on an expedited schedule, and expedite other elements of the election certification process. The division has increased the number of members of the state review board in order to expedite the election certification process.

As you are aware, there are two very close state legislative races in House District 12 and 18. Two teams of the state review board will begin their review with these districts in order to certify the House District races on September 9, 2010.

The division will request candidates for these two districts to submit a request for recount immediately versus waiting for the maximum five day period allowed for by state law. The division will conduct the recount within two days of receipt of the recount application. Both recounts would be able to be conducted on the same day and completed in one day.

The absentee office will begin UOCAVA ballot mailing preparation the week of September 13. Envelopes will be labeled and all absentee related documents will be inserted, with the exception of the ballot.

The last day to withdraw from the general election ballot is September 15. The division plans to certify the primary election on September 15 or 16. As soon as certification is

Mr. Chris Herren  
September 3, 2010  
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complete, the division will produce .pdf versions of all forty house district ballots. These ballots will include all races applicable to the house district, including all federal races. The absentee office will copy ballots and complete the ballot mailing for delivery to the U.S. Postal Service on September 18, 2010.

The absentee office will also fax ballots to UOCAVA voters that have requested their ballot be sent by fax on September 18, 2010.

As new requests for absentee ballots are received from UOCAVA voters, the division will continue to mail or fax the .pdf version of the ballot to UOCAVA voters until the official ballot becomes available.

Although the state does not believe it is required I commit to providing your office with updates as deadlines are met. These updates will include certification dates for the two close house district races, date of recount, date of recount completion, date of certification for the remainder of races and ballot propositions, and date ballots are provided to the absentee office.

I will also provide you with the number of ballots mailed and faxed to UOCAVA voters on September 18, 2010.

The division is pleased that Alaska is able to meet the 45 day ballot transit time and no longer needs a waiver from this deadline.

If you have any questions, please do not hesitate to contact me at 907-465-2644.

Sincerely,



Gail Fenumiai  
Director

cc: Hon. Craig Campbell, Lieutenant Governor  
John Cramer, Chief of Staff, Lieutenant Governor's Office  
Sarah Felix, AAG, Labor and State Affairs Section, Juneau  
Mike Barnhill, AAG, Labor and State Affairs Section, Juneau  
Lynn C. Simpson, Director, Human Capital and Resource Management  
Bob Carey, Director, Federal Voting Assistance Program

**State of Colorado**

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES AND THE STATE OF COLORADO 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 Colorado and the Colorado Secretary of State, Bernie Buescher, in his official capacity as Colorado'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 amendments by the MOVE Act, that states transmit to their UOCAVA voters validly requested absentee ballots at least 45 days before an election for Federal office. 42 U.S.C. § 1973ff-1(a)(8). Based on Colorado's August 10, 2010 primary election date and associated deadlines, the State requested from the Presidential designee for UOCAVA, the Secretary of Defense, a hardship exemption from the "45 day advance" ballot transmission requirement of UOCAVA pursuant to 42 U.S.C. § 1973ff-1(g). On August 27, 2010, the Secretary of Defense denied the request for a hardship exemption. That same day, the Department of Justice notified Colorado that in light of the waiver request denial, it appeared that the State would be in violation of UOCAVA for the upcoming Federal general election, and a lawsuit to enforce UOCAVA had been authorized.

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 Colorado's UOCAVA voters will have sufficient opportunity to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for 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 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 District of Colorado 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 Colorado 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. Bernie Buescher is the Secretary of State of the State of Colorado. As the State's Secretary of State, Buescher has general supervisory authority over all primary, general, congressional vacancy, and State-wide ballot issue elections in the State and is responsible for assuring that elections in the State are conducted in accordance with the law. COLO. REV. STAT. § 1-1-107 (2010).
5. Section 102(a)(8) 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).
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 hardship waiver from the Presidential Designee for UOCAVA, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g). Pursuant to Section 102(g)(2)(B)(i) of UOCAVA, the State applied for a hardship waiver on the grounds that Colorado's August 10, 2010 primary election and subsequent September 3, 2010 certification prevented the State from complying with Section 102(a)(8)(A). 42 U.S.C. § 1973ff-1(a)(8)(A). On August 27, 2010, pursuant to its statutory authority, the Department of Defense denied the State's request for a hardship waiver, finding that (1) Colorado had failed to establish an undue hardship that prohibits the State from complying with UOCAVA; and (2) the State's proposed comprehensive plan did not provide sufficient time for UOCAVA voters to vote and have their ballots counted as a substitute for transmitting absentee ballots not later than the 45th day prior to the November 2, 2010 Federal general election in accordance with Section 102(a)(8)(A) of UOCAVA.
7. On August 10, 2010, the State held a Federal primary election in which voters selected candidates for the Federal general election on November 2, 2010.
8. On September 3, 2010, Colorado certified the contents of the Federal general election ballot.
9. County election officials have received timely 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.

10. In order to be counted under Colorado law, ballots cast by Colorado military personnel serving outside the United States and their spouses and/or dependents residing outside of the United States for the same reason must be received by the close of business on the eighth day after the election, provided the ballot was voted and transmitted by 7:00 pm on election day. COLO. REV. STAT. § 1-8-103.5 (2010). Absentee ballots from other voters eligible to vote under UOCAVA, including absent uniformed services voters within the United States and non-military personnel residing overseas, must be received by the close of polls on election day to be counted.
11. The failure by the State either to obtain a hardship waiver or 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 ensure that election officials in all of Colorado's counties are able to and will transmit requested ballots to UOCAVA voters no later than 45 days in advance of the November 2, 2010 Federal general election, United States citizens protected under UOCAVA may be deprived of a sufficient opportunity to vote in that election, in violation of UOCAVA.
12. The Department and the State have been engaged in extensive discussions since the August 27, 2010 denial by the Secretary of Defense of the State's waiver request, 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 provide UOCAVA voters sufficient opportunity to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for 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 64 counties transmits absentee ballots no later than 45 days before the November 2, 2010 Federal general election (September 18, 2010) by postal mail, or electronically by either email or facsimile, according to the request of the voter, to all qualified UOCAVA voters who have requested a ballot by that date. Those actions include, but are not limited to, the following: a) issuing directives as necessary to ensure each Colorado county transmits an absentee ballot no later than 45 days before the November 2, 2010 election; and b) monitoring each county's progress toward meeting its ballot transmittal deadline. If, however, there is evidence on or before the 45th day before the Federal general election that

any county clerk will be unable to or has failed to deliver or mail absentee ballots to all qualified UOCAVA voters, the Secretary of State will deploy staff and/or otherwise assist such counties to ensure the ballots are transmitted on or before the 45th day before the Federal general election. The Secretary of State shall exercise his full authority pursuant to Sections 1-1-107 and 1-8-103 of the Colorado Election Code to ensure absentee ballots are sent to all qualified voters in accordance with the terms of UOCAVA. In the event that any county election official fails to comply with any directive issued by the Secretary of State or his agents under this paragraph, the Secretary of State shall immediately take such enforcement actions pursuant to Section 1-1-107 Colorado Election Code as are necessary to ensure compliance with the directives.

2. If there is evidence after the 45th day before the November 2, 2010 Federal general election that any Colorado counties have failed to send official absentee ballots to all UOCAVA voters whose applications were received and approved by that date, the State agrees that it will immediately notify the United States. The parties shall confer immediately on the appropriate remedial steps, which shall include the State's adoption of an emergency rule or other directive(s) pursuant to Section 1-8-103 of the Colorado Election Code to provide for one or both of the following measures as the circumstances require:
  - a. A requirement that official absentee ballots 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 the State or the expense of the county, as appropriate.
  - b. A requirement that the State and the counties take appropriate steps to make other means of returning absentee ballots available to all qualified absentee electors protected by UOCAVA, including express mail and/or electronic transmission of the official ballot by facsimile or email at the expense of the State or the county, as appropriate.
3. Because enforcement of the requirements of UOCAVA depends on timely and accurate information about the extent of compliance in each of Colorado's counties, the Secretary of State shall order the county clerk of each of Colorado's counties to confirm in writing to the Colorado Secretary of State, no later than September 20, 2010, that absentee ballots have been transmitted by postal mail or electronically, according to the request of the voter, no later than September 18, 2010 to all UOCAVA voters whose applications for such ballots have been received by that date.
4. Upon execution of this Memorandum of Agreement, the State shall issue a press statement for immediate release, posted immediately on the State's election information website, and distributed to the Federal Voting

Assistance Program; International Herald Tribune (<http://www.ihf.com>); USA Today International (<http://www.usatoday.com>); Military Times Media Group ([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes (<http://www.estripes.com>), and any other appropriate newspaper or news media in the State of Colorado. The news release shall, at a minimum: (a) summarize this Agreement; (b) identify the contests for Federal office that will be on the ballot on November 2, 2010; and (c) provide appropriate contact information at the State of Colorado's Elections Division for assistance. The State shall make additional reasonable efforts to advise affected electors that although some counties may need to send a ballot on copy paper if their regular ballots are not printed in time, the ballots will be counted in the same manner as any other ballot. Such outreach efforts will include the press statement required by this paragraph, email correspondence to all affected electors for whom the State has an email address, a letter to the Colorado Department of Military Affairs, and a notice posted on the Secretary of State website. The state shall also urge counties to post such notice on the county websites.

5. The State shall provide a report to the United States Department of Justice no later than September 21, 2010 concerning the transmittal of UOCAVA absentee ballots by the counties. The report shall (a) certify that absentee ballots were transmitted no later than September 18, 2010 to all qualified UOCAVA voters whose applications for ballots have been received and approved by that date; and (b) indicate, by county, the number of requests received and the number of UOCAVA absentee ballots transmitted, and the method of transmittal thereof. No later than October 6, 2010, the State shall provide a supplemental report showing, by county, the number of requests received and the number of UOCAVA absentee ballots transmitted, and the method of transmittal thereof, on each day between September 20, 2010 and the 30th day before the election.
6. The State shall provide a report to the United States Department of Justice no later than December 17, 2010 concerning the number of UOCAVA absentee ballots, by county, received and counted for the November 2, 2010 general election for Federal office. The report will set forth the following information, by county, and categorized by absent uniformed services voters with APO and FPO addresses, uniformed services voters at a street address within the United States, and overseas civilian voters:
  - a. The number of absentee ballots from UOCAVA voters received before the close of the polls on November 2, 2010 and counted;
  - b. The number of absentee ballots from UOCAVA voters received and counted after the close of the polls on November 2, 2010 but prior to the close of business on November 10, 2010;

- c. The number of absentee ballots from UOCAVA voters received later than the close of business on November 10, 2010; and
  - d. The number of absentee ballots from UOCAVA voters that were not counted in the general election for Federal office, for reasons other than late receipt.
7. The State shall take such actions as are necessary to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal general elections, including proposing legislation and taking any administrative actions needed to fully remedy the potential UOCAVA violations that gave rise to this Agreement. The parties agree to confer on the progress of these efforts, and Defendants shall provide a status report to the United States by July 1, 2011.

**D. Term.**

The State's obligations under this Agreement shall commence immediately and shall expire in their entirety on December 1, 2012. This Agreement may terminate sooner, however, and shall so terminate immediately upon the State's adoption of legislation or other measures that remedy fully the UOCAVA-related concerns giving rise to this Agreement.

**E. Enforcement.**

The terms of this Agreement are intended to resolve the potential violation of Section 102(a)(8) of UOCAVA arising from the denial of the State's waiver application on August 27, 2010. Where 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 Colorado as set forth above, and additionally 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. Appropriate relief may include those measures referenced in Paragraph 2(a) and (b) of this Agreement and/or an appropriately-tailored extension of the State's ballot receipt deadlines. 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 16th day of September, 2010:

For the United States:

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

*Richard Dellheim /JWT*

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For the Colorado Secretary of State:

BERNIE BUESCHER



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**District of Columbia**

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES AND THE DISTRICT  
OF COLUMBIA AND THE DISTRICT OF COLUMBIA BOARD OF ELECTIONS AND  
ETHICS 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"), and the District of Columbia and the District of Columbia Board of Elections and Ethics ("Board") (collectively, "the District"), to facilitate the District'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 amendments by the MOVE Act, that states that have not received a hardship exemption transmit to their UOCAVA voters validly requested absentee ballots at least 45 days before an election for Federal office. 42 U.S.C. § 1973ff-1(a)(8). The definition of "state" includes the District of Columbia. 42 U.S.C. § 1973ff-6. Based on the District's September 14, 2010 primary election date, the District requested from the Presidential designee for UOCAVA, the Secretary of Defense, a hardship exemption from the "45 day advance" transmission requirement of UOCAVA, pursuant to 42 U.S.C. § 1973ff-1(g). On August 27, 2010, the Secretary of Defense denied the District's request. That same day, the Department of Justice notified the District that in light of the waiver request denial, it appeared the District would be in violation of UOCAVA for the upcoming Federal general election and a lawsuit to enforce UOCAVA had been authorized.

Following discussions between the Department of Justice and the District, the District has taken steps to ensure that UOCAVA voters have 45 days to receive and return their ballots for the upcoming Federal general election. Pursuant to authority set forth in D.C. Code §1-1001.05(a)(14), the Board met on September 1, 2010 and passed emergency rules amending 3 DCMR Chapter 7, "Election Procedures" to incorporate October 4, 2010 as the ballot transmission deadline. Pursuant to authority set forth in D.C. Code §1-1001.05(a)(14), the Board met on September 1, 2010 and passed emergency rules amending 3 DCMR Chapter 7, "Election Procedures" and 3 DCMR Chapter 8, "Tabulation and Certification of Election Results" to add seven (7) additional days to its ballot receipt deadline extension.

The United States and the District, through counsel, have conferred and agree that this matter should be resolved without the burden and expense of litigation. The parties share the goals of providing UOCAVA voters with sufficient opportunity to receive absentee ballots they have requested and to submit marked absentee ballots in time to be counted for 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 negotiated in good faith and enter into this Agreement as an appropriate resolution of the UOCAVA violations alleged by the United States.

## **B. Recitals**

The United States and the District stipulate and agree that:

1. The United States District Court for the District of Columbia 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 District 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. The Board is the District agency primarily responsible for conducting elections in the District. D.C. Code § 1-1001.05(a)(3). As part of that responsibility, the Board is responsible for recording and counting votes, certifying election results, providing information to UOCAVA voters, and complying with UOCAVA's mandates. D.C. Code §§ 1-1001.05(a)(4), (10), and (11).
5. Section 102(a)(8) of UOCAVA requires 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. 42 U.S.C. § 1973ff-1(a)(8).
6. States can be exempted from the 45-day requirement if they apply for and are granted a hardship waiver from the Presidential Designee for UOCAVA, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g). The District applied for a hardship waiver on the grounds that its September 14, 2010 primary election prevented the District from complying with Section 102(a)(8)(A). On August 27, 2010, pursuant to its statutory authority, the Department of Defense denied the District's request for a hardship waiver, finding that although the District's primary election date caused the District undue hardship, the District's proposed comprehensive plan did not provide sufficient time for UOCAVA voters to vote and have their ballots counted as a substitute for transmitting absentee ballots not later than the 45<sup>th</sup> day prior to the November 2, 2010 Federal general election in accordance with Section 102(a)(8)(A) of UOCAVA.
7. On September 14, 2010, the District conducted a Federal primary election in which voters selected candidates for the Federal general election on November 2, 2010. The

date of the September 14, 2010 primary election is 49 days prior to the November 2, 2010 general election for Federal office.

8. Election officials of the District have received timely 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.
9. To be counted under District of Columbia law, all mailed and postmarked absentee ballots must be postmarked not later than the day of the election; all mailed absentee ballots (postmarked and non-postmarked) must be received not later than ten days after the election. D.C. Mun. Regs. tit. 3, § 717.10.
10. The District concedes that, absent emergency remedial measures, it would not be able to send absentee ballots to UOCAVA voters until October 13, 2010, and thus would transmit ballots by mail no more than 20 days prior to the Federal general election, and no more than 30 days in advance of the November 12, 2010 deadline for the return of mailed ballots for the November 2, 2010 Federal general election.
11. The District's failure to either obtain a hardship waiver or to transmit absentee ballots to qualified UOCAVA voters 45 days in advance of the November 2, 2010 Federal general election violates Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A). Absent the remedial actions described herein, United States citizens protected under UOCAVA may be deprived of a sufficient opportunity to vote in that election, in violation of UOCAVA.

### **C. Terms of Agreement**

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

1. For the November 2, 2010 Federal general election, the District shall take the following steps to ensure that all UOCAVA voters are sent the official absentee ballot no later than October 4, 2010: (a) The District will complete final tabulation of all election ballots for the September 14, 2010 primary election no later than September 24, 2010; (b) The District will certify the results of the September 14, 2010 primary election no later than September 27, 2010; (c) The District will transmit the official absentee ballots to UOCAVA voters by postal mail, or electronically by either email or fax or the District's Digital Vote by Mail system, according to the request of the voter, no later than October 4, 2010.
2. For the November 2, 2010 general election, the District shall extend by 7 days the deadline for receipt of ballots from UOCAVA voters to ensure that UOCAVA voters have the benefit of a full 45-day period to receive and return their ballots. Under this extension, absentee ballots from all UOCAVA voters that are executed and sent by November 2, 2010 and received by the close of business on November 19, 2010 will be accepted and tabulated in the final

Federal general election results. For the November 2, 2010 general election for Federal office, the District shall take such steps as are necessary to count as validly cast those ballots, including Federal Write-in Absentee Ballots, cast by absent uniformed service voters and overseas voters qualified to vote in the District pursuant to UOCAVA, provided such ballots are executed by November 2, 2010, received by November 19, 2010, and are otherwise valid.

3. The District shall take all necessary steps to afford eligible UOCAVA voters a reasonable opportunity to learn of this Memorandum of Agreement by including a notice with every absentee ballot sent to UOCAVA voters. The notice shall, at minimum: (a) explain that the deadline for the ballot to be executed and sent is November 2, 2010; (b) explain that the deadline for receipt of the ballot has been extended to November 19, 2010; and (c) provide appropriate contact information at the District's Board of Elections and Ethics for assistance.
4. Upon execution of this Agreement, the District shall issue a press statement for immediate release, posted immediately on the District's election information website and distributed to the Federal Voting Assistance Program; International Herald Tribune (<http://www.iht.com>); USA Today International (<http://www.usatoday.com>); Military Times Media Group ([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes ([www.estripes.com](http://www.estripes.com)), and any other appropriate newspaper or news media in the District. The news release shall, at minimum: (a) summarize this Agreement, including a notice that the deadline for receipt of the ballot has been extended to November 19, 2010 for UOCAVA voters; (b) identify the contests for Federal office that will be on the ballot on November 2, 2010; and (c) provide appropriate contact information at the District's Board of Elections and Ethics for assistance.
5. The District shall provide a report to the United States Department of Justice no later than October 6, 2010 concerning the transmittal of UOCAVA absentee ballots. The report shall (a) certify that absentee ballots were transmitted no later than October 4, 2010 to all qualified UOCAVA voters whose applications for ballots have been received and approved by that date; and (b) indicate the number of requests received, the number of UOCAVA absentee ballots transmitted, and the method of transmittal.
6. The District shall provide a report to the United States Department of Justice no later than December 17, 2010 concerning the number of UOCAVA absentee ballots received and counted for the November 2, 2010 general election for Federal office. The report will set forth the following information categorized by absent uniformed services voters with APO and FPO addresses, uniformed services voters at a street address within the United

States, and overseas civilian voters:

- a. The number of absentee ballots from UOCAVA voters received before the close of the polls on November 2, 2010 and counted;
  - b. The number of absentee ballots from UOCAVA voters received and counted after the close of the polls on November 2, 2010 but prior to the close of business on November 19, 2010;
  - c. The number of absentee ballots from UOCAVA voters received later than the close of business on November 19, 2010; and
  - d. The number of absentee ballots from UOCAVA voters that were not counted in the general election for Federal office, for reasons other than late receipt.
7. The District shall take all necessary actions to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including all legislative and administrative actions needed to fully comply with UOCAVA. The parties recognize that on June 1, 2010, the Council of the District of Columbia adopted a "Sense of the Council Primary Election Timing Resolution of 2010" acknowledging that the District needed to enact legislation to move its primary election for federal offices to a date no later than the first Tuesday of the first full week of August, beginning in 2012. The parties agree to confer on the progress of these efforts, and the District shall provide a status report to the United States by April 1, 2011.

#### **D. Term**

The District's obligations under this Agreement shall commence immediately and shall expire in their entirety on January 31, 2013.

#### **E. Enforcement**

The terms of this Agreement are intended to resolve the potential violation of Section 102(a)(8) of UOCAVA arising from the denial of the District's waiver application on August 27, 2010. Where the District 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 Columbia 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 District 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 17<sup>th</sup> day of September, 2010:

For the United States:

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

*Richard Dellheim/LGC*

T. CHRISTIAN HERREN JR.  
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For the District of Columbia:



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For the District of Columbia Board of Elections and Ethics:



ROKEY W. SULEMAN, II

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**State of Hawaii**

**MEMORANDUM OF AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE STATE OF HAWAII REGARDING COMPLIANCE WITH THE UNIFORMED AND OVERSEAS CITIZENS ABSENTEE VOTING ACT FOR THE NOVEMBER 2, 2010 FEDERAL GENERAL ELECTION**

A. Introduction

This agreement is entered into between the United States of America, through the U.S. Department of Justice ("United States" or "the Department"), and the State of Hawaii and Scott Nago, in his official capacity of Chief Election Officer of the State of Hawaii (collectively the "State"), through the Office of the Attorney General of the State of Hawaii, 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"), 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 amendments by the MOVE Act, that states transmit to their UOCAVA voters validly requested absentee ballots at least 45 days before an election for Federal office, 42 U.S.C. § 1973ff-1(a)(8), absent the granting of a waiver pursuant to 42 U.S.C. § 1973ff-1(g)). Hawaii's primary election is on September 18, 2010, which is exactly 45 days prior to the November 2, 2010 federal general election. In light of this, the State on March 25, 2010, requested from the Presidential designee for UOCAVA, the Secretary of Defense, a hardship exemption from the "45 day advance" transmission requirement of UOCAVA, pursuant to 42 U.S.C. § 1973ff-1(g). In its waiver request, Hawaii proposed mailing out its absentee ballots 35 days in advance of the November

2010 election, to accommodate State law requirements concerning, among other things, certification of the results of the primary election. On August 27, 2010, the Secretary of Defense found that Hawaii's primary date caused the State undue hardship, but denied Hawaii's waiver application due to the inadequacy of its comprehensive plan to transmit UOCAVA ballots in time to be received, marked and returned in time to be counted for the November 2, 2010 federal general election.

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 Hawaii's UOCAVA voters will have sufficient opportunity to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election. As consideration for this Agreement, the United States has agreed to forgo 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.

B. Recitals.

The United States and the State stipulate and agree that:

1. The United States District Court for the District of Hawaii has jurisdiction to enforce provisions of the 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.
2. The United States Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4.
3. The State of Hawaii 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. Scott T. Nago is the Chief Election Officer for the State of Hawaii. The State's Chief Election Officer has general supervisory authority over all elections in the State and is responsible for assuring that elections in the State are conducted in accordance with the law. Haw. Rev. Stat. §§ 11-2, 11-155, 11-156.
5. Section 102(a)(8) 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 hardship exemption (waiver) is obtained pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8).
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 hardship waiver from the Presidential Designee for UOCAVA, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g). Pursuant to Section 102(g)(2)(B)(i) of UOCAVA, the State applied for a hardship waiver on grounds that Hawaii's September 18, 2010 primary election prevented the State from complying with Section 102(a)(8)(A). 42 U.S.C. § 1973ff-1(a)(8)(A). On August 27, 2010, pursuant to its statutory authority, the Department of Defense denied the State's request for a hardship waiver.
7. On September 18, 2010, the State will conduct a Federal primary election in which voters will select candidates for the Federal general election on November 2, 2010. The date of the September 18, 2010 primary election is exactly 45 days prior to the November 2, 2010 general election for Federal office.

8. Election officials of the State have received timely requests for absentee ballots for the November 2, 2010 Federal general election from approximately 208 voters who are entitled to vote pursuant to the provisions of UOCAVA.
9. The State has asserted it will be unable to send absentee ballots to UOCAVA voters until on or about September 28, 2010, and thus will transmit ballots no earlier than 35 days in advance of the deadline for their return for the November 2, 2010 Federal general election.
10. Under Hawaii law, absentee ballots received after the polls close on election day are not counted. Haw. Rev. Stat. § 15-9.
11. The United States contends that the failure by Hawaii either to obtain a hardship waiver or to transmit absentee ballots to UOCAVA voters by the 45<sup>th</sup> day before the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A) of UOCAVA. Hawaii contends that since the Secretary applied an incorrect standard in determining whether to grant Hawaii a waiver, and that he erred in failing to grant Hawaii a waiver, Hawaii is not in violation of UOCAVA. The United States contends that absent corrective action, the admitted inability of election officials in Hawaii to transmit absentee ballots to UOCAVA voters 45 days in advance of the November 2, 2010 Federal general election threatens to deprive United States citizens protected under UOCAVA of a sufficient opportunity to vote in that election. Hawaii contends that the current time voters will have to transmit absentee ballots provides sufficient opportunity for those voters to vote in that election.
12. The parties recognize that on May 20, 2010, in order to facilitate compliance with UOCAVA's requirement to transmit absentee ballots to UOCAVA voters 45 days

in advance of an election for Federal office, the Hawaii Governor signed into law Act 126, which takes effect on January 1, 2011 and which, among other things, moves Hawaii's primary date to the second Saturday in August in every even-numbered year. The parties anticipate that this law will enable Hawaii, without a waiver, to meet the requirements of Section 102(a)(8)(A) of UOCAVA in future general elections for Federal office beginning in 2012.

13. The Department and the State have been engaged in extensive discussions since the August 27, 2010 denial by the Secretary of Defense of the State's waiver request, in an attempt to reach agreement on actions to be taken by the State to ensure that United States citizens protected under UOCAVA have a sufficient opportunity to receive, mark and return their absentee ballots in time to be counted for the November 2, 2010 Federal general election. To ensure that Hawaii's UOCAVA voters will have sufficient opportunity to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election, the parties have agreed on a series of actions to be taken by the State, specifically including the provision, at the State's expense, of express delivery and return of absentee ballots for UOCAVA voters, to protect the voting rights of UOCAVA voters. The parties believe that, in the instant circumstances, the State's agreement to provide express delivery and return service for absentee ballots and to take other actions set forth below will decrease substantially the overall transit time required for the delivery, marking and return of absentee ballots of UOCAVA voters in time for those ballots to be counted for the November 2, 2010 Federal general election.

14. 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 transmit ballots for the November 2, 2010 Federal general election either electronically or by mail, according to the voter's choice, to all of the State's UOCAVA voters who have validly requested such ballots, no later than September 24, 2010, except if an election contest or contests make it impractical for the State to do so as described in Paragraph C.2 below. With regard to all UOCAVA voters who have requested transmission by mail, the State shall provide for transmittal and return of such ballots as set forth in Paragraphs 3 and 4 below.
2. If an election contest or contests occurs such that the State believes it is impractical to send out a ballot to any UOCAVA voters affected by the pending election contest(s) by September 24, 2010, the State will immediately confer on this with the Department. If the parties agree that it is impractical to send out a ballot to any UOCAVA voters because of a pending election contest or contests, the State shall proceed as follows: a) the State shall immediately attempt to contact by, in the following order, electronic mail, facsimile or telephone, each UOCAVA voter whose electronic or mail ballot transmission is affected by the pending election contest(s) to advise each such voter: i) that transmission of his or her ballot has been delayed due to the election contest(s); ii) of the option to receive his or her ballot by electronic mail if the voter has not already chosen such option; and iii) that his or her ballot will be transmitted immediately upon the resolution of the election contest(s), which

is anticipated to be no more than 4 days; b) the State shall transmit, by electronic mail or by express mail as set forth immediately below, dependent upon the individual UOCAVA voter's choice, each such delayed UOCAVA ballot to each UOCAVA voter affected by the election contest(s), immediately upon the resolution of each election contest(s) by the Hawaii court. In addition to the above, where a particular election contest does not involve any Federal office, but only State office(s), the UOCAVA voter whose absentee ballot transmission is delayed by such contest should also be advised by the State of the candidates for Federal office for the November 2, 2010 Federal general election and of his or her ability to utilize the Federal Write-in Absentee Ballot (FWAB), with instruction on how to access the FWAB, to vote for Federal office candidates prior to receipt of his or her absentee ballot from the State. Where the State contact with such voter is by electronic mail, the State shall attach a FWAB and a list of the candidates for Federal office to the electronic mail in the form of an electronic file.

If the parties are unable to resolve any dispute regarding an election contest, the parties agree that the dispute may be resolved by the United States District Court for the District of Hawaii following the bringing of an action to enforce this Agreement and/or UOCAVA by the United States.

3. The State shall at its expense provide for express mail service for transmittal of blank ballots and return of completed ballots for military voters and overseas voters with Diplomatic Post Office ("DPO") addresses, through the use of the Express Mail Service of the United States Postal Service ("USPS").
4. The State shall at its expense provide for express delivery service for transmittal of blank ballots and return of completed ballots for all other UOCAVA voters,

utilizing FedEx express delivery service. The State may also include International Reply coupons to certain voters, to offer an alternative means of return of the completed ballots.

5. The State shall provide 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 Hawaii State or local election officials, as well as a set of instructions developed by the State explaining how to return the ballot by express mail or express delivery, or electronically, as set forth below. The parties acknowledge that the Department of Defense has established new procedures under UOCAVA for collecting marked absentee ballots of absent overseas uniformed services voters for the November 2, 2010 Federal general election and for delivering such marked absentee ballots to the appropriate election officials. 42 U.S.C. § 1973ff-2A. The instructions accompanying all ballots should advise such absent overseas uniformed services voters of their option to utilize the Department of Defense ballot collection and return service or the pre-addressed express mail or express delivery form provided with the ballot to return their ballots to Hawaii election officials.
6. With regard to the State's UOCAVA voters who have validly requested transmittal of absentee ballots, by mail or electronically, for the November 2, 2010 Federal general election, the State agrees to take the following actions to attempt to ensure that such UOCAVA voters receive their ballots and are periodically kept aware of their options under Hawaii Administrative Rule § 3-174-19, to request, receive and return, by facsimile or electronic mail, a replacement absentee ballot for

the November 2, 2010 Federal general election where they have not received such ballot within 5 days of the federal general election: a) Beginning on October 18, 2010, 15 days before the November 2, 2010 federal general election, the State shall attempt to contact by, in the following order, electronic mail, facsimile or telephone, each UOCAVA voter who has validly requested electronic or mail ballot transmission, and whose marked ballot has not yet been returned by the voter and received by Hawaii election officials, to inquire of the voter whether the voter has yet received, by mail or electronically, as applicable, his or her blank absentee ballot; b) Where the State determines by such contact that a UOCAVA voter has not yet received his or her blank absentee ballot, the State shall advise such voter: i) of his or her option under Hawaii Administrative Rule § 3-174-19, to request, receive and return, by facsimile or electronic mail, a replacement absentee ballot for the November 2, 2010 Federal general election where they have not received such ballot within 5 days of the federal general election; and ii) how to request and return a replacement absentee ballot under such circumstances. Such contact of UOCAVA voters as outlined in this paragraph shall be repeated by the State on October 23, 2010, 10 days before the November 2, 2010 federal general election, and on October 28, 2010, 5 days before the election; and c) Where such contact of a UOCAVA voter pursuant to this paragraph 5 days before the election indicates that the voter still has not received his or her absentee ballot from the State as requested, the State shall advise each such voter of his or her immediate option to request a replacement absentee ballot by electronic mail or by facsimile and to return such ballot by the same means and how to request and return such ballot. The parties acknowledge that electronic or facsimile return of a replacement absentee ballot may involve a voter

being required to waive certain privacy rights with regard to his or her vote.

7. By close of business on Wednesday, September 22, 2010, the State shall complete its attempt to contact its UOCAVA voters eligible to participate in the State's November 2, 2010 Federal general election, by, in the following order, electronic mail, facsimile or phone, to advise such UOCAVA voters of the terms of this Agreement and, specifically, of: 1) the State's plan for express mail or express delivery service for UOCAVA voters as set forth in this Agreement; 2) the option to receive a ballot by electronic mail if the voter has not already requested such option; and 3) the ability of UOCAVA voters who have not received their absentee ballot 5 days before the November 2, 2010 Federal general election to request, receive and return a replacement ballot by facsimile or electronic mail.
8. The State shall also take additional steps to afford UOCAVA voters eligible to participate in the State's November 2, 2010 general election for Federal office a reasonable opportunity to learn of this Agreement by issuing a press statement for release within two business days of execution of this Agreement, posted on the State's election information website, and distributed to the Federal Voting Assistance Program; International Herald Tribune (<http://www.iht.com>); USA Today International (<http://www.usatoday.com>); Military Times Media Group ([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes ([www.estripes.com](http://www.estripes.com)), and any other appropriate newspaper or news media in the State. The news release shall, at a minimum: (1) summarize this Agreement; (2) provide appropriate contact information at the State of

Hawaii Office of Elections; and (3) identify the contests for Federal office that will be on the ballot on November 2, 2010;

9. The State shall provide a report to the United States no later than September 21, 2010, on the progress of the implementation of this Agreement, including the final plans for express delivery of ballots, copies of instructions to accompany such ballots, the status of the State's efforts to contact UOCAVA voters concerning this Agreement and their ballot transmittal options, and the status of certification and preparation of the ballots for transmittal to UOCAVA voters. The State shall advise the Department within 24 hours by electronic mail to Risa Berkower at [risa.berkower@usdoj.gov](mailto:risa.berkower@usdoj.gov) as well as by attempted telephone contact to Risa Berkower at 202-305-0150, of any occurrence which may give rise to noncompliance with any term of this Agreement;

10. The State shall provide a report to the United States no later than September 26, 2010, concerning the transmittal of UOCAVA absentee ballots by the counties. The report shall: (a) certify whether absentee ballots were transmitted by September 24, 2010 to all qualified UOCAVA voters who had validly requested such ballots, and if not, the particulars; and (b) indicate, by county, the number of requests received and the number of UOCAVA absentee ballots transmitted, and the method of transmittal thereof. Where there has been an election contest which has delayed the transmission of UOCAVA ballots as set forth above, the State shall provide the above information to the United States as to such ballot transmission within one (1) business day of resolution of each such contest;

11. The State shall provide a supplemental report to the United States by October 6, 2010, concerning the transmittal of UOCAVA absentee ballots, by county, to voters whose requests for an absentee ballot were received subsequent to September 24, 2010, but not less than thirty days (30) before the election. The report shall indicate, by county, the number of requests received and the number of UOCAVA absentee ballots transmitted, and the method of transmittal thereof, on each day between September 24, 2010 and the 30th day before the election; and
12. The State shall provide a report to the United States no later than December 17, 2010, concerning the number of UOCAVA absentee ballots, by county, received and counted for the November 2, 2010 general election for Federal office. The report will set forth the following information, by county, and categorized by the following voter groups: absent uniformed services voters with APO and FPO addresses; uniformed services voters within the United States; and overseas civilian voters:
  - a. The number of absentee ballots from UOCAVA voters received and counted before the close of the polls on November 2, 2010;
  - b. The number of absentee ballots from UOCAVA voters received after the close of the polls on November 2, 2010; and
  - c. To the extent that the State has the information, the number of absentee ballots from UOCAVA voters that were not counted in the general election for Federal office and the reason those ballots were rejected.

D. Term.

The State's obligations under this Agreement shall commence immediately and shall expire in their entirety on December 31, 2010.

E. Enforcement.

The terms of this Agreement are intended to resolve the alleged violation of Section 102(a)(8) of UOCAVA arising from the denial of the State's waiver application on August 27, 2010. Where the State materially 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 Hawaii as set forth above, and pursuant to law, and additionally 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. Non-Admission of Fault, Liability, or Violation of UOCAVA

The State has entered into this Agreement in order to avoid litigation and in order to help facilitate voting by UOCAVA-covered voters. The State does not admit any fault, liability, or violation of UOCAVA, and were there UOCAVA litigation the State would assert, *inter alia*, that the Secretary applied an incorrect legal standard in denying Hawaii a waiver, and that the Secretary had an obligation to issue Hawaii a waiver pursuant to 42 U.S.C. §§ 1973ff-1(g), which provides that the Secretary "shall approve a waiver" under certain conditions, which Hawaii believes were met.

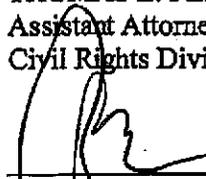
G. General.

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 into this Agreement this 16TH day of September, 2010:

FOR THE UNITED STATES:

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

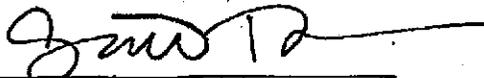


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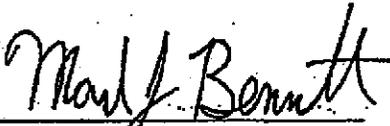
The undersigned enter into this Agreement this 16<sup>th</sup> day of September, 2010:

FOR THE STATE OF HAWAII:



SCOTT T. NAGO  
Chief Election Officer  
State of Hawaii

APPROVED AS TO FORM AND SUBSTANCE:



MARK J. BENNETT  
Attorney General  
State of Hawaii

Territory of  
US Virgin Islands



**DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL**

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September 2, 2010

VIA MAIL & E-MAIL

Thomas E. Perez, Esq.  
Assistant Attorney General  
U.S. Department of Justice  
Office of the Attorney General  
Civil Rights Division  
Washington, D.C. 20035

Re: U.S. Virgin Islands Compliance with Section 102(a)(8) of  
UOCAVA, 42 U.S.C. § 173ff-1(a)(8)

Dear Attorney Perez:

The Election System of the Virgin Islands has received correspondence dated August 27, 2010, from the Under Secretary of Defense denying the U.S. Virgin Islands' April 6, 2010 request for a waiver, pursuant to Section 102(g) of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. § 173ff-1(g), of the 45-day requirement under Section 102(a)(8) of UOCAVA, 42 U.S.C. § 173ff-1(a)(8). On August 27, 2010 we also received correspondence from the U.S. Department of Justice, Civil Rights Division, alleging failure of the U.S. Virgin Islands to comply with the provisions of Section 102(a)(8) of UOCAVA, 42 U.S.C. § 173ff-1(a)(8) which requires the Territory to send absentee ballots to absent uniformed services voters and overseas voters not later than 45 days before an election for Federal Office. On September 1, 2010 territorial representatives also had discussions with representatives from the U.S. Department of Justice, Civil Rights Division, Voting Section, regarding the August 27, 2010 letters and the Territory's plan to meet the 45-day requirement set forth in UOCAVA. This serves as our formal response to the August 27, 2010 correspondence and memorializes the Territory's plan, as discussed in the September 1, 2010 conference, to meet the 45-day requirement under Section 102(a)(8) of UOCAVA, 42 U.S.C. § 173ff-1(a)(8).

Section 102(a)(8) of UOCAVA, 42 U.S.C. § 173ff-1(a)(8) applies exclusively to elections for federal office. As you are aware the only federal office that is elected by Virgin Islands voters is a non-voting delegate from the Virgin Islands to the United States House of Representatives. In April 2010, the Election System of the Virgin Islands requested a waiver of the 45-day requirement in anticipation that the office of the Delegate to Congress may be in the primary election. We have recently confirmed that no federal positions will be on the ballot in the upcoming September 11, 2010, primary election— as there are no competing party nominations for the office of Delegate to Congress. Thus, the office of the Delegate to Congress

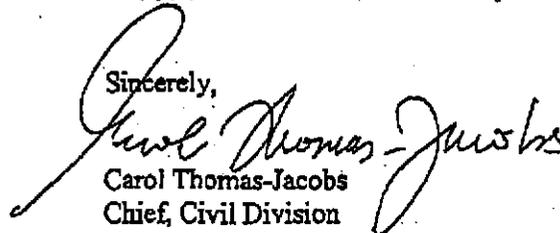
Thursday, September 02, 2010  
Page 2 of 2

will only be contested in the November 2, 2010 general election. In light of this development, the Virgin Islands would be able to send absentee ballots for the federal office to absent military and overseas voters within the time set forth in Section 102(a)(8) of UOCAVA.

In order to meet the 45-day requirement under UOCAVA, the U.S. Virgin Islands must send the absentee ballot for the federal office to absent military and overseas voters who are registered to vote in the Virgin Islands and has requested an absentee ballot ("UOCAVA voters") no later than September 18, 2010. As we informed you yesterday, the Election System of the Virgin Islands shall send to UOCAVA voters two separate ballots. The first absentee ballot with the names of all the candidates for the office of Virgin Islands' Delegate to Congress office shall be sent to UOCAVA voters on or before September 18, 2010. After the certification of the primary elections, in which only local offices are contested, a second absentee ballot with the names of the candidates for local offices shall be sent to UOCAVA voters. The Election System of the Virgin Islands anticipates that the second ballot will be forwarded to UOCAVA voters by October 2, 2010.

During our meeting, U.S. Department of Justice representatives had no objection to our course of action and agreed that such action would resolve the issue raised in the August 27, 2010 letters to the Virgin Islands Supervisor of Elections. We hope that this formal response satisfies your concerns, and resolves all issues regarding the U.S. Virgin Islands' compliance with of the 45-day requirement set forth in Section 102(a)(8) of UOCAVA, 42 U.S.C. § 173ff-1(a)(8).

Sincerely,



Carol Thomas-Jacobs  
Chief, Civil Division

cc: Vincent F. Frazer, Esq., Attorney General  
Raymond Williams, Chair, Board of Elections St. Croix District and Chair Joint Board of Elections  
Lorna Thomas, Chair, Board of Elections St. Thomas & St. John District  
John Abramson, Jr., Supervisor of Elections  
Terryln Smock, Esq., Assistant Attorney General

**State of Wisconsin**

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 ) Case No. 10-cv-518  
 v. )  
 )  
 THE STATE OF WISCONSIN, et al., )  
 )  
 Defendants. )  
 )  
 )  
 )  
 )  
 )  
 )

**CONSENT DECREE**

Plaintiff United States of America (“United States”) initiated this action against the State of Wisconsin (the “State”); the Wisconsin Government Accountability Board (the “G.A.B.”); Judges Gordon Myse, Thomas Barland, Gerald C. Nichol, Michael Brennan, Thomas Cane, and David G. Deininger, in their official capacities as officers or members of the G.A.B.; and Kevin J. Kennedy, in his official capacity as Director and General Counsel of the G.A.B. (collectively, “Defendants”), to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7. The United States’ complaint alleges a violation of UOCAVA arising from certain provisions of Wisconsin law which prevent the Defendants from transmitting absentee ballots to absent uniformed services voters and overseas voters (“UOCAVA voters”) by the 45<sup>th</sup> day before the November 2, 2010 Federal general election, as required by Section 102(a)(8)(A) of UOCAVA, and from the fact that the State has not obtained a hardship waiver of that requirement pursuant to Section 102(g) of UOCAVA. In particular, as a result of Wisconsin’s September 14, 2010 primary election and other state laws related to certifying candidates and preparing ballots for the general election, the

State asserts that it will not be able to transmit ballots by the 45-day deadline provided in UOCAVA. Accordingly, UOCAVA voters will not be provided the time specified under Federal law to receive, mark, and submit their ballots in time to have those ballots counted in the November 2, 2010 Federal general election.

The United States and Defendants, through their respective counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties share the goal of providing UOCAVA voters with sufficient opportunity under Federal law to participate in the November 2, 2010 Federal general election. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the UOCAVA claim alleged by the United States. Accordingly, the United States and Defendants stipulate and agree that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to UOCAVA, 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 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.

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4, and this Court has jurisdiction of this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

3. Defendant State of Wisconsin 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. Defendant Wisconsin Government Accountability Board is responsible for administering election laws in the State and promulgating rules applicable to jurisdictions in the State “for the purpose of interpreting or implementing the laws regulating the conduct of elections.” WIS. STAT. § 5.05(1).

5. Defendant Judge Gordon Myse is the G.A.B.’s Chair and is sued in his official capacity. The Chair of the G.A.B. or his designee is responsible for canvassing and certifying the election returns. WIS. STAT. § 7.70(3). Defendants Judges Thomas Barland, Gerald C. Nichol, Michael Brennan, Thomas Cane, and David G. Deininger are members of the G.A.B. and are sued in their official capacities.

6. Defendant Kevin J. Kennedy is sued in his official capacity as the Director and General Counsel of the G.A.B. As General Counsel of the G.A.B., Defendant Kennedy “perform[s] legal and administrative functions for the board.” WIS. STAT. § 5.05(1m). Defendant Kennedy has been designated by the G.A.B. as the Chief Election Officer for the State pursuant to WIS. STAT. § 5.05(3g).

7. Section 102(a)(8) 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 hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8).

8. 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 hardship waiver from the Presidential Designee for UOCAVA, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g).

9. On August 2, 2010, the State applied for a hardship waiver pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(g). Pursuant to Section 102(g)(1)(B) of UOCAVA, the State’s

waiver application included an explanation of the hardship that made the State unable to transmit absentee ballots to UOCAVA voters at least 45 days prior to the November 2, 2010 general election for Federal office. Pursuant to Section 102(g)(2)(B)(i) of UOCAVA, the State's explanation of hardship was based on the fact that Wisconsin's September 14, 2010 primary election date prevented the State from complying with Section 102(a)(8)(A). 42 U.S.C. § 1973ff-1(a)(8)(A).

10. Pursuant to Section 102(g)(1)(D) of UOCAVA, the State's August 2, 2010 waiver application also included the State's proposed comprehensive plan to ensure that all UOCAVA voters who submitted timely requests for absentee ballots would be able to receive and return such ballots in time to have those ballots counted in the November 2, 2010 general election for Federal office. The State's proposed comprehensive plan relied on: the transmission of state absentee write-in ballots to all UOCAVA voters as early as 90 days before the November 2, 2010 election, with a candidate list becoming available online 35 days before the election; permitting the electronic transmission of the official absentee ballot to UOCAVA voters who requested such transmission, and mailing official absentee ballots to all other UOCAVA voters, on October 4, 2010, 29 days before the election; and counting ballots from military voters postmarked by the date of the election and received no later than 10 days after the date of the election.

11. On August 27, 2010, the Department of Defense, pursuant to its statutory authority, issued a decision denying the State's August 2, 2010 application for a hardship waiver. That decision found that the State had shown an undue hardship under Section 102(g)(2)(B)(i), in that the State's September 14, 2010 primary election date prevented the State from complying with Section 102(a)(8)(A) of UOCAVA. The Department of Defense nonetheless denied the State's

waiver application, pursuant to Section 102(g)(2)(A), on the ground that the State's comprehensive plan did not provide UOCAVA voters sufficient time to receive, mark, and return absentee ballots in time to have those ballots counted in the November 2, 2010 Federal general election.

12. The State contends that: (a) its comprehensive plan did provide UOCAVA voters sufficient time to receive, mark, and return absentee ballots in time to have those ballots counted in the November 2, 2010 Federal general election; (b) the denial of the State's hardship waiver application was, therefore, erroneous under Section 102(g)(2) of UOCAVA; and (c) because the State should have received a hardship waiver, its inability, due to the hardship created by its September 14, 2010 primary election date, to transmit absentee ballots to UOCAVA voters at least 45 days before the November 2, 2010 Federal general election should not constitute a violation of Section 102(a)(8)(A) of UOCAVA. The United States denies these contentions.

13. The United States contends that: (a) the State's comprehensive plan did not provide UOCAVA voters sufficient time to receive, mark, and return absentee ballots in time to have those ballots counted in the November 2, 2010 Federal general election; (b) the denial of the State's hardship waiver application was, therefore, correct under Section 102(g)(2) of UOCAVA; and (c) because the State's hardship waiver application was denied, the State's inability to transmit absentee ballots to UOCAVA voters at least 45 days before the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A) of UOCAVA. The State denies these contentions.

14. Notwithstanding any disagreements between the State and the United States, a failure by the State either to obtain a hardship waiver or to transmit absentee ballots to UOCAVA voters by

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the 45<sup>th</sup> day before the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A) of UOCAVA.

15. On September 14, 2010, the State will conduct a Federal primary election in which voters will select candidates for the Federal general election on November 2, 2010. The date of the September 14, 2010 primary election is 49 days prior to the November 2, 2010 general election for Federal office. Under Wisconsin law, as the post-election canvassing process takes approximately 14 days, the list of certified candidates for the general election is not required to be available until September 28, 2010, 35 days before the November 2, 2010 general election. WIS. STAT. § 7.08(2)(c). However, the Defendants are able and agree to produce the certified candidate list on September 27, 2010, 36 days before the general election.

16. Local election officials of the State have received timely 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.

17. Under Wisconsin law, local election officials are required to send official absentee ballots to UOCAVA voters by postal mail, or electronically by either email or telefacsimile, according to the request of the voter, by October 4, 2010, 29 days in advance of the November 2, 2010 Federal general election. WIS. STAT. § 7.15(1)(cm).

18. Under Wisconsin law, ballots from "military electors" must be postmarked by election day and received by a municipal clerk within ten (10) days after election day in order to be counted. WIS. STAT. § 6.221(3)(b). "Military electors" include members of a uniformed service, members of the merchant marine, civilian employees of the United States and civilians officially attached to a uniformed service who are serving outside the United States, peace corps

volunteers, and spouses and dependents of the above. WIS. STAT. § 6.22(1)(b). Thus, “military electors” include members of a uniformed service stationed overseas or within the United States.

19. Under Wisconsin law, ballots from overseas citizens protected by UOCAVA who do not qualify as “military electors” must be returned by election day to be counted. WIS. STAT. § 6.87(6).

20. In order to avoid the burdens, delays, and uncertainties of litigation and to efficiently and expeditiously promote the parties’ shared goal of providing UOCAVA voters with sufficient opportunity under Federal law to participate in the November 2, 2010 general election, the Defendants will order local election officials to transmit the official absentee ballots by postal mail, or electronically by either email or telefacsimile, according to the request of the voter, no later than October 1, 2010, 32 days before the election. To ensure that Wisconsin’s UOCAVA voters will have sufficient opportunity under Federal law to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election, the parties agree that this Court should enter an order extending the deadline for receipt of ballots from UOCAVA voters to 17 days after the election. Under this extension, absentee ballots from all UOCAVA voters that are executed and sent by November 2, 2010, and received by the close of business on November 19, 2010, will be accepted and tabulated in the final Federal general election results.

WHEREFORE, the parties having freely given their consent, and the terms of the Decree being fair, reasonable, and consistent with the purposes of UOCAVA, it is hereby ORDERED, ADJUDGED, AND DECREED that:

- (1) For the November 2, 2010 general election, the Defendants shall take the following steps to ensure that all UOCAVA voters are sent the

official absentee ballot for the general election no later than October 1, 2010: (a) the Defendants will certify the results of the September 14, 2010 primary election no later than September 27, 2010; (b) pursuant to WIS. STAT. § 5.06(6), the G.A.B. will order county election officials to transmit the official absentee ballots to municipal election officials no later than October 1, 2010; (c) pursuant to WIS. STAT. § 5.06(6), the G.A.B. will also order municipal election officials to transmit the official absentee ballots to UOCAVA voters by postal mail, or electronically by either email or telefacsimile, according to the request of the voter, no later than October 1, 2010, after receipt of the official absentee ballots from the county election officials; (d) in the event that any county or municipal election official fails to comply with an order issued by G.A.B. under this paragraph, the Defendants will immediately take such enforcement actions as are necessary and legally available to them to secure compliance with all such orders; and (e) for the November 2, 2010 Federal general election, the Defendants shall order local election officials pursuant to WIS. STAT. § 5.06(6) and shall take such other steps as are necessary to count as validly cast ballots in the November 2, 2010 Federal general election all those ballots, including Federal Write-in Absentee Ballots and state write-in absentee ballots, cast by absent uniformed services voters and overseas voters qualified to vote in Wisconsin pursuant to UOCAVA,

provided such ballots are executed and sent by November 2, 2010, received by November 19, 2010, and are otherwise valid.

- (2) The Defendants shall take such steps as are necessary to afford UOCAVA voters eligible to participate in the State's November 2, 2010 Federal general election a reasonable opportunity to learn of this Court's order by including a notice with every absentee ballot sent to a UOCAVA voter. The notice shall, at minimum: (a) explain that the deadline for the ballot to be executed and sent is November 2, 2010; (b) explain that the deadline for receipt of the ballot, and the hard copy of the voter's request or application for an absentee ballot if it was sent electronically, has been extended to November 19, 2010; and (c) provide appropriate contact information at the G.A.B. for assistance.
- (3) Upon the entry of this Consent Decree, the Defendants shall issue a press statement for immediate release, posted immediately on the State's election information website, and distributed to the Federal Voting Assistance Program; International Herald Tribune (<http://www.iht.com>); USA Today International (<http://www.usatoday.com>); Military Times Media Group ([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes ([www.estripes.com](http://www.estripes.com)), and any other appropriate newspaper or news media in the State of Wisconsin. The news release shall, at a minimum: (a) summarize this order, including a notice that the

deadline for receipt of the ballot has been extended to November 19, 2010; (b) identify the contests for Federal office that will be on the ballot on November 2, 2010; and (c) provide appropriate contact information at the G.A.B. for assistance.

(4) The Defendants shall provide a report to the United States Department of Justice no later than October 6, 2010, concerning the transmittal of UOCAVA absentee ballots by the local election jurisdictions. The report shall: (a) certify that absentee ballots were transmitted no later than October 1, 2010, to all qualified UOCAVA voters whose applications for ballots have been received and approved by that date; and (b) indicate, by local election jurisdiction, the number of requests received and the number of UOCAVA absentee ballots transmitted, and the method of transmittal thereof. The report shall also indicate, by local election jurisdiction, the number of requests received and the number of UOCAVA absentee ballots transmitted, and the method of transmittal thereof, on each day after October 1, 2010, through October 4, 2010.

(5) The Defendants shall file a report with the United States Department of Justice no later than December 17, 2010, concerning the number of UOCAVA absentee ballots, by local election jurisdiction, received and counted for the November 2, 2010 general election for Federal office. The report will set forth the following information, by local election

jurisdiction, and categorized by “military electors” and other overseas voters:

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

b. The number of absentee ballots from UOCAVA voters received and counted after the close of the polls on November 2, 2010, but prior to the close of business on November 19, 2010;

c. The number of absentee ballots from UOCAVA voters received later than the close of business on November 19, 2010; and

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

(6) The Defendants shall take such actions as are necessary to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including proposing legislation and taking any administrative actions needed to fully remedy the potential UOCAVA violations arising from the State's Federal primary election schedule. The parties agree to confer on the progress of these efforts, and Defendants shall provide a status

report to the United States Department of Justice by September 1,  
2011.

The Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree through December 31, 2010. Absent notification by the Court before that date, the clerk is directed to close this file subject to reopening upon good cause shown.

ORDERED this 14th day of September, 2010.

*/s/ William Conley*

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William M. Conley  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 10-cv-518
v.	)	
	)	
THE STATE OF WISCONSIN; THE	)	
WISCONSIN GOVERNMENT	)	
ACCOUNTABILITY BOARD; THE	)	
HON. GORDON MYSE, its Chair;	)	
THE HONS. THOMAS BARLAND,	)	
GERALD C. NICHOL, MICHAEL	)	
BRENNAN, THOMAS CANE, and	)	
DAVID G. DEININGER, its members;	)	
and KEVIN J. KENNEDY, its Director	)	
and General Counsel,	)	
	)	
Defendants.	)	
	)	
	)	

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**COMPLAINT**

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States pursuant to 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. Pursuant to amendments made by the MOVE Act, UOCAVA requires that states transmit absentee ballots to UOCAVA voters at least 45 days in advance of an election for Federal office when ballot

requests have been received within 45 days of that election, unless the state receives a hardship exemption pursuant to UOCAVA. 42 U.S.C. §§ 1973ff-1(a)(8) & (g). Wisconsin sought but did not receive a hardship waiver under UOCAVA for the November 2, 2010 Federal general election.

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4, and brings this enforcement action to ensure that Wisconsin's UOCAVA voters will have sufficient time to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election.

3. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

4. Defendant State of Wisconsin (the "State") 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.

5. Defendant Wisconsin Government Accountability Board (the "G.A.B.") is responsible for administering election laws in the State and promulgating rules applicable to jurisdictions in the State "for the purpose of interpreting or implementing the laws regulating the conduct of elections." WIS. STAT. § 5.05(1).

6. Defendant Judge Gordon Myse is the G.A.B.'s Chair and is sued in his official capacity. The Chair of the G.A.B. or his designee is responsible for canvassing and certifying the election returns. WIS. STAT. § 7.70(3). Defendants Judges Thomas Barland, Gerald C. Nichol, Michael Brennan, Thomas Cane, and David G. Deininger are members of the G.A.B and are sued in their official capacities.

7. Defendant Kevin J. Kennedy is sued in his official capacity as the Director and General Counsel of the G.A.B. As General Counsel of the G.A.B., Defendant Kennedy “perform[s] legal and administrative functions for the board.” WIS. STAT. § 5.05(1m). Defendant Kennedy has been designated by the G.A.B. as the Chief Election Officer for the State pursuant to WIS. STAT. § 5.05(3g).

8. Section 102(a)(8) 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 hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8).

9. 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 hardship waiver from the Presidential designee for UOCAVA, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g). Pursuant to Section 102(g)(2)(B)(i) of UOCAVA, the State applied for a hardship waiver on grounds that Wisconsin’s September 14, 2010 primary election prohibited the State from complying with Section 102(a)(8)(A). 42 U.S.C. §§ 1973ff-1(a)(8)(A) & (g)(2)(B)(i). On August 27, 2010, pursuant to its statutory authority, the Department of Defense denied the State’s request for a hardship exemption.

10. On September 14, 2010, the State will conduct a Federal primary election in which voters will select candidates for the Federal general election on November 2, 2010. The date of the September 14, 2010 primary election is 49 days prior to the November 2, 2010 general election for Federal office. Under Wisconsin law, as the post-election canvassing process takes approximately 14 days, the list of certified candidates for the general election is not required to

be available until September 28, 2010, 35 days before the November 2, 2010 general election.

WIS. STAT. § 7.08(2)(c).

11. Election officials of the State have received timely 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.

12. Under Wisconsin law, local election jurisdictions are required to send absentee ballots to UOCAVA voters by October 4, 2010, WIS. STAT. § 7.15(1)(cm), and thus will transmit ballots 29 days in advance of the November 2, 2010 Federal general election.

13. Under Wisconsin law, ballots from “military electors” must be postmarked by election day and received by a municipal clerk within ten days after election day in order to be counted. WIS. STAT. § 6.221(3)(b). “Military electors” include members of a uniformed service, members of the merchant marine, civilian employees of the United States and civilians officially attached to a uniformed service who are serving outside the United States, peace corps volunteers, and spouses and dependents of the above. WIS. STAT. § 6.22(1)(b). Thus, “military electors” include members of a uniformed service stationed overseas or within the United States. With the ten-day extension, military electors would have 39 days to receive, mark, and submit their ballots.

14. Under Wisconsin law, ballots from overseas citizens who are covered under UOCAVA, but who do not qualify as “military electors,” must be returned by election day to be counted. WIS. STAT. § 6.87(6). Thus, UOCAVA voters who are not “military electors” would only have 29 days to receive, mark, and submit their ballots.

15. Defendants’ failure to transmit absentee ballots to UOCAVA voters 45 days in advance of the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

16. An order of this Court is necessary requiring Defendants to take corrective action in order to protect the rights granted by UOCAVA and to ensure that the State's UOCAVA voters have sufficient time to receive, mark, and submit their ballots in time to have them counted for the November 2, 2010 general election for Federal office.

WHEREFORE, Plaintiff asks this Court to hear this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345, and:

(1) Issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of Wisconsin election officials to send absentee ballots to UOCAVA voters at least 45 days in advance of the November 2, 2010 general election for Federal office violates Section 102(a)(8)(A) of UOCAVA; and

(2) Issue injunctive relief ordering the Defendants, their agents and successors in office, and all persons acting in concert with them:

- (a) To take such steps as are necessary to assure that UOCAVA voters shall have sufficient time to receive, mark, and submit their ballots in time to have them counted in the November 2, 2010 general election for Federal office;
- (b) To take such steps as are necessary to afford UOCAVA voters who are eligible to participate in the State's November 2, 2010 general election for Federal office a reasonable opportunity to learn of this Court's order;
- (c) To provide a report to the United States concerning the dates ballots were transmitted and the number of UOCAVA ballots, by county, sent, received, and counted for the November 2, 2010 general election for Federal office pursuant to this Court's order within 45 days after the election; and

(d) To take such other steps as are necessary to assure that the State conducts its elections in compliance with UOCAVA in future federal elections.

The United States further asks this Court to order such other relief as the interests of justice may require, together with the costs and disbursements of this action.

Date: September 10, 2010

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State of New York

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK  
ALBANY DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 1:10-CV-1214 (GLS/RFT)
v.	)	
	)	
STATE OF NEW YORK and NEW	)	
YORK STATE BOARD OF ELECTIONS,	)	
	)	
Defendants.	)	
_____	)	

**CONSENT DECREE**

Plaintiff United States of America (“United States”) initiated this action against the State of New York (the “State”) and the New York State Board of Elections (“SBOE”) to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7. The United States’ complaint alleges a violation of UOCAVA arising from Defendants’ failure to transmit absentee ballots to qualified absent uniformed services voters and overseas voters (“UOCAVA voters”) in accordance with the terms of the comprehensive plan set forth in New York’s approved application for a waiver from UOCAVA requirements. In particular, the United States’ Complaint alleges that the Defendants failed to ensure that local election officials transmitted absentee ballots to UOCAVA voters by October 1, 2010. Accordingly, some UOCAVA voters in at least thirteen New York counties will not be provided the time specified under law to receive, mark, and submit their ballots in time to have those ballots counted in the November 2, 2010 Federal general election.

The United States and Defendants, through respective counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties share

the goal of providing UOCAVA voters with sufficient opportunity under Federal law to participate in the November 2, 2010 Federal general election. The parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the UOCAVA claim alleged by the United States. Accordingly, the United States and Defendants stipulate and agree that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to UOCAVA, 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 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.

2. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

3. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. §1973ff-4, and has brought this enforcement action to ensure that New York’s UOCAVA voters will have sufficient opportunity to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election.

4. Defendant State of New York 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.

5. Defendant SBOE has jurisdiction of, and is responsible for, the execution and enforcement of statutes governing elections and related procedures in New York State, and as

such is responsible for the administration of State law affecting voting, and for assuring that elections in the State are conducted in accordance with law. See N.Y. ELEC. LAW §§ 3-104(1), 3-100(1), 3-102(1-17). The principal office of the SBOE is in Albany, New York.

6. The local election officials throughout New York State are responsible for complying with all New York State laws, rules, and regulations relating to the administration of the election process for the county that they represent.

7. Pursuant to amendments made by the MOVE Act, UOCAVA requires states to 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 hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A). The 45th day before the November 2, 2010 Federal general election is September 18, 2010.

8. 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 hardship waiver from the Presidential designee for UOCAVA, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g). A hardship waiver may be granted if (1) the state submits a comprehensive plan in its application for a hardship waiver that “provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office,” and (2) if the state’s primary election date, legal contests causing a delay in generating ballots, or provisions of the state’s constitution, make complying with the requirement that ballots be transmitted 45 days in advance of a Federal election an undue hardship. 42 U.S.C. §1973ff-1(g)(2).

9. Where a hardship exemption is granted, UOCAVA requires that states transmit validly-requested ballots to UOCAVA voters in accordance with the provisions of the comprehensive plan upon which the hardship waiver is based. 42 U.S.C. §§ 102(a)(8)(A) & 102(g).

10. Pursuant to Section 102(g)(2)(B)(i) of UOCAVA, the State of New York applied for a hardship waiver on grounds that New York's September 14, 2010 primary election prohibited the State from complying with Section 102(a)(8)(A). 42 U.S.C. §§ 1973ff-1(a)(8)(A) & (g)(2)(B)(i). Specifically, New York asserted that local election officials could not transmit absentee ballots to UOCAVA voters by September 18, 2010, the 45<sup>th</sup> day before the November 2, 2010 Federal general election.

11. Pursuant to Section 102(g)(1)(D) of UOCAVA, the State's hardship application included a comprehensive plan that outlined the steps the State would take to ensure that UOCAVA voters had time to receive, mark, and submit their ballots in time to have the ballot counted. 42 U.S.C. § 1973ff-1(g)(1)(D). New York's comprehensive plan relied on two key provisions that together created a 45-day period for UOCAVA voters to receive, mark, and submit their ballots: (1) the transmission of absentee ballots to UOCAVA voters on October 1, 2010, 32 days before the November 2, 2010 Federal general election, and (2) the deadline of November 15, 2010, 13 days after the election, for receipt of ballots from UOCAVA voters postmarked by November 1, 2010.

12. On August 27, 2010, pursuant to its statutory authority, and based on the comprehensive plan set forth in New York's waiver application, the Department of Defense granted the State's request for a hardship exemption. In its determination letter, the Department of Defense noted the waiver was based "on an understanding that the State of New York will

transmit absentee ballots for the November 2, 2010 Federal general election to UOCAVA voters no later than October 1, 2010.”

13. Despite the October 1, 2010 deadline outlined in the comprehensive plan set forth in New York’s waiver application, local election officials in New York State nonetheless failed to transmit absentee ballots for the Federal general election to UOCAVA voters by that date in at least thirteen New York counties. Election officials in those counties exceeded the October 1, 2010 deadline for transmitting UOCAVA ballots by periods ranging from four days to nine days.

14. In Kings County, election officials completed transmitting absentee ballots to UOCAVA voters on or around October 10, 2010.

15. In New York and Queens Counties, election officials completed transmitting absentee ballots to UOCAVA voters on or around October 9, 2010.

16. In Bronx and Erie Counties, election officials completed transmitting absentee ballots to UOCAVA voters on or around October 8, 2010.

17. In Richmond County, election officials completed transmitting absentee ballots to UOCAVA voters on or around October 7, 2010.

18. In Niagara, Putnam, and Westchester Counties, election officials completed transmitting absentee ballots to UOCAVA voters on or around October 6, 2010.

19. In Onondaga County, election officials completed transmitting absentee ballots to UOCAVA voters on or around October 5, 2010.

20. Subsequent investigation by the parties has revealed that additional counties mailed their ballots after October 1, 2010, but no later than October 10, 2010, including Albany, Nassau, and Wayne Counties.

21. Local election officials in New York have received timely requests for absentee ballots for the November 2, 2010 Federal general election from voters who are entitled to vote by absentee ballot pursuant to the provisions of UOCAVA.

22. Defendants' failure to ensure that local election officials transmitted absentee ballots by October 1, 2010, as provided by the comprehensive plan in New York's waiver application, violates Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

23. Under New York law, absentee ballots from UOCAVA voters must be postmarked, or show a dated endorsement of receipt by another agency of the United States government, or in the case of military voters, signed and dated by the military voter and one witness thereto, by November 1, 2010, the day before election day, and received within thirteen days after election day in order to be counted. N.Y. ELEC. LAW § 10-114; 11-212.

24. To avoid the burdens, delays, and uncertainties of litigation and to efficiently and expeditiously promote the parties' shared goal of providing UOCAVA voters with sufficient opportunity under Federal law to participate in the November 2, 2010 Federal general election, the parties agree that this Court should enter an order requiring that Defendants ensure that local election officials contact by electronic mail all UOCAVA voters for whom local election officials have electronic mail contact information to notify those voters that they may choose to receive their ballots for the November 2, 2010 Federal general election by telefacsimile, electronic mail, or in an electronic, downloadable Portable Document Format (.pdf) through the State's ballot delivery wizard, instead of by postal mail. If the local election officials lack electronic mail contact information for affected voters, but do have telefacsimile contact information for such voters, the Defendants shall ensure that local election officials provide the notification required by this paragraph by telefacsimile. Said electronic mail or telefacsimile communication with

these voters shall explain the terms of this agreement. Said communication shall also provide these voters with instructions on how to access electronically, download, and print their ballots through the State's online ballot delivery system if the voter so chooses. Said communication shall also advise all overseas uniformed services voters of the Department of Defense's program for collection and delivery of return ballots by expedited mail delivery service to local election officials.

25. To ensure that New York's UOCAVA voters will have sufficient opportunity under Federal law to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election, the parties agree that this Court should enter an order providing that ballots from all UOCAVA voters qualified to vote in the State that are executed and postmarked by November 1, 2010, and received by the close of business on November 24, 2010, will be accepted and tabulated in the final general election results.

26. The parties reserve the right to modify this agreement as necessary, and to seek additional supplemental relief, if information regarding additional UOCAVA violations is discovered.

WHEREFORE, the parties having freely given their consent, and the terms of the Decree being fair, reasonable, and consistent with the requirements of UOCAVA, it is hereby ORDERED, ADJUDGED, AND DECREED that:

- (1) SBOE shall ensure that local election officials in New York State take such steps as are necessary to count as validly cast ballots in the November 2, 2010 Federal general election all those ballots, including Federal Write-in Absentee Ballots, cast by absent uniformed services voters and overseas voters qualified

to vote in the State pursuant to UOCAVA, provided such ballots are executed and postmarked or show a dated endorsement of receipt by another agency of the United States government (or in the case of military voters, are signed and dated by the military voter and one witness thereto) by November 1, 2010, received by November 24, 2010, and are otherwise valid. In the event that local election officials receive more than one ballot from a single qualified voter, the SBOE will ensure that local election officials resolve any conflicts according to existing procedures under State law.

- (2) SBOE shall ensure that local election officials contact by electronic mail all UOCAVA voters for whom local election officials have electronic mail contact information to notify those voters that they may choose to receive their ballots for the November 2, 2010 Federal general election by telefacsimile, electronic mail, or in an electronic, downloadable Portable Document Format (.pdf) through the State's ballot delivery wizard, instead of by postal mail. If the local election officials lack electronic mail contact information for affected voters, but do have telefacsimile contact information for such voters, the SBOE shall ensure that the local election officials shall provide the notification required by this paragraph by telefacsimile. Said electronic mail or telefacsimile communication with these voters shall explain the terms of this agreement. Said communication shall also provide these voters with instructions on how to access electronically, download, and print their ballots through the State's online ballot delivery system if the voter so chooses. Said communication shall also advise all uniformed services voters located overseas of the Department of Defense's program for collection and delivery of return ballots by expedited mail delivery

service to local election officials. Said communications shall be made no later than two business days after entry of this Consent Decree.

- (3) Upon entry of this Consent Decree, SBOE shall notify the Director of the Federal Voting Assistance Program of the United States Department of Defense ("FVAP") and request assistance in notifying military and other eligible voters of the relief afforded in this order, and coordinate with FVAP as necessary to facilitate such notice.
- (4) Upon the entry of this Consent Decree, SBOE shall take the following steps to endeavor to give affected voters notice of the contents of this order: (a) issue a press statement for immediate release, posted immediately on the State's election information website, and distributed as broadly and immediately as practicable to national and local wire services, to radio and television broadcast stations and to daily newspapers of general circulation in the State, including the New York City metropolitan area. The release shall also be distributed to the Federal Voting Assistance Program; the New York Times (<http://www.nytimes.com>); International Herald Tribune (<http://www.iht.com>); USA Today International (<http://www.usatoday.com>); Military Times Media Group ([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes ([www.estripes.com](http://www.estripes.com)), and other appropriate news media in the State of New York. The news release shall, at a minimum: (a) summarize this order, including an explanation that the deadline for receipt of the ballot has been extended to November 24, 2010; (b) identify the contests for Federal office

that will be on the ballot on November 2, 2010; (c) notify UOCAVA voters that they may choose to receive their ballots for the November 2, 2010 Federal general election by telefacsimile, electronic mail, or in an electronic, downloadable Portable Document Format (.pdf) through the State's ballot delivery wizard, instead of by postal mail; and (d) provide appropriate contact information at the SBOE for assistance. SBOE shall also prepare and distribute written public service announcements describing this order for broadcast on radio and television networks, including but not limited to the media described above.

- (5) SBOE shall provide written certification to counsel of record for the United States that all absentee ballots validly requested by UOCAVA voters by October 1, 2010 have been transmitted; such certification shall be provided no later than three business days after the entry of this order. This certification for each county will include: (a) the number of UOCAVA absentee ballot requests received prior to September 18, 2010, between September 19, 2010 and October 1, 2010, and between October 1, 2010 and the date each county completed transmitting those ballots; (b) the number of UOCAVA absentee ballot requests, by the requested method of transmittal, for all UOCAVA absentee ballot requests received prior to the date each county completed transmitting those ballots; and (c) by date, the number of UOCAVA ballots transmitted and the method of transmittal thereof where the ballot was requested prior to the date each county completed transmitting those ballots.

**(6) SBOE shall file a report with counsel of record for the United States no later than December 17, 2010, concerning the number of UOCAVA absentee ballots, by county, received and counted for the November 2, 2010 general Federal election. The report will set forth the following information, by county, categorized by absent uniformed services voters with APO/FPO addresses or non- US street addresses; uniformed services voters at a street address within the US; and overseas civilian voters:**

**a. The number of absentee ballots from UOCAVA voters received by local election officials before the close of business on November 15, 2010, and counted;**

**b. The number of absentee ballots from UOCAVA voters received and counted after the close of business on November 15, 2010, but prior to the close of business on November 24, 2010;**

**c. The number of absentee ballots from UOCAVA voters received later than the close of business on November 24, 2010; and**

**d. The number of absentee ballots from UOCAVA voters that were not counted in the general election for Federal office, for reasons other than late receipt, and the reasons such ballots were not counted.**

**(7) The parties acknowledge that, in the absence of a waiver from the Department of Defense, changes in state law, the state election schedule, and/or election**

procedures are necessary to prevent future violations of UOCAVA. The Defendants are committed to exploring the need for future relief, including possible changes of law or administrative regulation to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, and to address potential UOCAVA violations arising from the State's Federal election schedule or election practices. The parties agree to confer on the progress of these efforts, and Defendants shall provide a status report to the United States Department of Justice by April 1, 2011.

The Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree and to ensure compliance with Section 102(a)(8)(A) of UOCAVA through December 31, 2012.

The undersigned agree to entry of this Consent Decree on October 19, 2010:

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/s/ Barbara Cottrell

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For the Defendants:

State of New York:

/s/ Jeffrey M. Dvorin

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New York State Board of Elections:

/s/ Kimberly Galvin

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SO ORDERED this 19 day of October, 2010.

~~Gary L. Sharpe~~  
United States District Judge  
~~Gary L. Sharpe~~



4. Defendant State of New York 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.

5. Defendant New York State Board of Elections (“SBOE”) has jurisdiction of, and is responsible for, the execution and enforcement of statutes governing elections and related procedures in New York State, and as such is responsible for the administration of State law affecting voting, and for assuring that elections in the State are conducted in accordance with law. See N.Y. ELEC. LAW §§ 3-104(1), 3-100(1), 3-102(1-17). The principal office of the New York SBOE is in Albany, New York.

6. Pursuant to amendments made by the MOVE Act, UOCAVA requires states to 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 hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A). The 45th day before the November 2, 2010, Federal general election is September 18, 2010.

7. 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 hardship waiver from the Presidential designee for UOCAVA, the Secretary of Defense. 42 U.S.C. § 1973ff-1(g). A hardship waiver may be granted if (1) the state submits a comprehensive plan in its application for a hardship waiver that “provides absent uniformed services voters and overseas voters sufficient time to receive absentee ballots they have requested and submit market absentee ballots to the appropriate State election official in time to have the ballot counted in the election for Federal office,” and (2) if the state’s primary election date, a legal contest causing a delay in generating ballots, or the state’s constitution, make complying with the requirement that ballots be transmitted 45 days in advance of a Federal election an undue hardship. 42 U.S.C. §1973ff-1(g)(2).

8. Where a hardship exemption is granted, UOCAVA requires states to transmit validly-requested ballots to UOCAVA voters in accordance with the provisions of the comprehensive plan upon which the hardship waiver is based. 42 U.S.C. §§ 102(a)(8)(A) & 102(g).

9. Pursuant to Section 102(g)(2)(B)(i) of UOCAVA, the State of New York applied for a hardship waiver on grounds that New York's September 14, 2010 primary election prohibited the State from complying with Section 102(a)(8)(A) with respect to the November 2, 2010 general election 42 U.S.C. §§ 1973ff-1(a)(8)(A) & (g)(2)(B)(i). See Attachments A (April 23, 2010 Waiver Application) and B (June 9, 2010 Supplement to Waiver Application). Specifically, New York asserted that it could not transmit absentee ballots to UOCAVA voters by September 18, 2010, the 45<sup>th</sup> day before the November 2, 2010 federal general election.

10. Pursuant to Section 102(g)(1)(D) of UOCAVA, the State's hardship application included a comprehensive plan that outlined steps the State would take to ensure that UOCAVA voters had time to receive, mark, and submit their ballots in time to have the ballot counted. 42 U.S.C. §1973ff-1(g)(1)(D). See Attachment A at 6-8. New York's comprehensive plan included two key provisions that created a 45-day period for UOCAVA voters to receive, mark, and submit their ballots: (1) transmission of absentee ballots to UOCAVA voters on October 1, 2010, 32 days before the November 2, 2010 Federal general election and (2) extension of the deadline for receipt of ballots from UOCAVA voters postmarked by November 1, 2010, to November 15, 2010, 13 days after the November 2, 2010 Federal general election. See id. at 6.

11. On August 27, 2010, pursuant to its statutory authority, and based on the comprehensive plan set forth in New York's waiver application, the Department of Defense granted the State's request for a hardship exemption. See Attachment C (August 27, 2010 Waiver Grant). In reaching this determination, the Department of Defense noted the waiver was based "on an understanding that the

State of New York will transmit absentee ballots for the November 2, 2010 Federal general election to UOCAVA voters no later than October 1, 2010.” See Attachment C at 1.

12. Under New York law, absentee ballots from UOCAVA voters must be postmarked by November 1, 2010, the day before the November 2, 2010 general election, and received within 13 days after election day to be counted. N.Y. ELEC. LAW §§ 10-114(1) and 11-212.

13. Despite the October 1, 2010 deadline outlined in the comprehensive plan set forth in New York’s waiver application, election officials in New York State nonetheless failed to transmit absentee ballots for the Federal general election to UOCAVA voters by that date in at least nine New York counties. Election officials in those counties exceeded the October 1, 2010 deadline in the State’s waiver application for transmitting UOCAVA ballots by periods ranging from five days to nine days.

14. On information and belief, in Kings County, transmission of absentee ballots to UOCAVA voters was not completed until on or around October 10, nine days after the October 1, 2010 transmission deadline in the State’s waiver application, 22 days before the State’s postmarking deadline, 23 days before the Federal general election, and 36 days before the State’s extended deadline for receipt of UOCAVA ballots.

15. On information and belief, in New York and Queens Counties, election officials did not complete transmission of absentee ballots for UOCAVA voters until on or around October 9, eight days after the October 1, 2010 transmission deadline in the State’s waiver application, 25 days before the State postmarking deadline, 26 days before the Federal general election, and 39 days before the extended deadline for receipt of UOCAVA ballots.

16. On information and belief, in Erie and Bronx Counties, election officials did not complete transmission of absentee ballots for UOCAVA voters until on or around October 8, one week after the October 1, 2010 transmission deadline in the State’s waiver application, 24 days before the State

postmarking deadline, 25 days before the Federal general election, and 38 days before the State's extended deadline for receipt of UOCAVA ballots.

17. On information and belief, in Richmond County, election officials did not complete transmission of absentee ballots for UOCAVA voters until on or around October 7, six days after the October 1, 2010 transmission deadline in the State's waiver application, 25 days before the State's postmarking deadline, 26 days before the Federal general election, and 39 days before the State's extended deadline for receipt of UOCAVA ballots.

18. On information and belief, in Niagara, Putnam, and Westchester Counties, absentee ballots for UOCAVA voters were transmitted on or around October 6, five days after the October 1, 2010 transmission deadline in the State's waiver application, 26 days before the State postmarking deadline, 27 days before the Federal general election, and 40 days before the extended deadline for receipt of UOCAVA ballots.

19. State election officials have received timely requests for absentee ballots for the November 2, 2010 Federal general election from voters who are entitled to vote by absentee ballot pursuant to the provisions of UOCAVA in Niagara, Putnam, Westchester, Erie, Richmond, Bronx, New York, Kings, and Queens Counties.

20. Defendants' failure to ensure that election officials in Niagara, Putnam, Westchester, Erie, Richmond, Bronx, New York, Kings, and Queens Counties transmitted absentee ballots by October 1, 2010, as provided by the comprehensive plan in New York's waiver application, violates Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

21. An order of this Court is necessary requiring Defendants to take corrective action to protect rights granted by UOCAVA and to ensure that the State's affected UOCAVA voters have sufficient time to receive, mark, and submit their ballots in time to have them counted for the November 2, 2010 general election for Federal office.

WHEREFORE, Plaintiff asks this Court to hear this action pursuant to 42 U.S.C. §1973ff-4 and 28 U.S.C. § 1345, and:

(1) Issue a declaratory judgment under 28 U.S.C. § 2201 that the Defendants violated Section 102(a)(8)(A) of UOCAVA by failing to ensure that election officials in Niagara, Putnam, Westchester, Erie, Richmond, Bronx, New York, Kings, and Queens Counties transmitted absentee ballots by October 1, 2010, as provided by the comprehensive plan in New York's waiver application; and

(2) Issue injunctive relief ordering the Defendants, their agents and successors in office, and all persons acting in concert with them:

- (a) To take such steps as are necessary to assure that UOCAVA voters shall have sufficient time to receive, mark, and submit their ballots in time to have them counted in the November 2, 2010 general election for Federal office;
- (b) To take such steps as are necessary to afford affected UOCAVA voters who are eligible to participate in the State's November 2, 2010 general election for Federal office a reasonable opportunity to learn of this Court's order;
- (c) To take such steps as are necessary to assure that the certification schedule for the November 2, 2010 general election for Federal office be adjusted as necessary to permit affected UOCAVA voters sufficient time to receive, mark, and submit their ballots in time to have them counted;
- (d) To report to the United States concerning the dates ballots were transmitted and the number of UOCAVA ballots, by county, sent, received, and counted for the November 2, 2010 general election for Federal office pursuant to this Court's order within 45 days after the election; and

- (e) To take such other steps as are necessary to assure that the State conducts all of its future Federal elections in full compliance with UOCAVA.

The United States further asks this Court to order such other relief as the interests of justice may require, together with the costs and disbursements of this action.

Date: October 12, 2010

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# Territory of Guam

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IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GOVERNMENT OF GUAM; THE GUAM  
ELECTION COMMISSION; and JOHN F.  
BLAS, its Executive Director, in his official  
capacity,

Defendants.

CIVIL CASE NO. 10-00025

**ORDER GRANTING UNITED  
STATES DECLARATORY  
AND PERMANENT INJUNCTIVE  
RELIEF**

This matter comes before the court on the United States' Motion for Temporary Restraining Order and Preliminary Injunction and the trial on the merits.<sup>1</sup> After reviewing the Motion and hearing from both parties, the court declares that the Defendants violated Sections 102(a)(8)(A) and 102(f)(1) of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), as amended by the Military and Overseas Voter Empowerment Act, and hereby ORDERS that:

- (1) To ensure that Guam's UOCAVA voters will have the option to receive an absentee ballot by electronic transmission for the November 2, 2010 Federal general election, the Defendants shall take the

<sup>1</sup> On October 8, 2010, pursuant to Rule 65(a)(2) of the Federal Rules of Civil Procedure, the court consolidated the trial on the merits with the preliminary injunction hearing. See Docket No. 15.

1 following actions: (a) The Defendants shall establish email as Guam's  
2 electronic transmission option for UOCAVA voters; (b) The  
3 Defendants shall contact each UOCAVA voter by email for those  
4 voters for whom they have email addresses on file and by telephone  
5 for all other UOCAVA voters for whom they have telephonic contact  
6 information on file, and inform each UOCAVA voter of the option to  
7 request to receive an absentee ballot by email transmission, and  
8 provide electronic email and cost-free telephonic contact information  
9 to such voters so that those voters may make the request to the Guam  
10 Election Commission; and (c) The Defendants shall promptly transmit  
11 an absentee ballot by email to all UOCAVA voters who request it as  
12 provided above.

13 (2) To ensure that Guam's UOCAVA voters will have sufficient  
14 opportunity under Federal law to receive absentee ballots they have  
15 requested and submit marked absentee ballots in time to be counted for  
16 the November 2, 2010 Federal general election, Defendants shall count  
17 as validly cast ballots in the November 2, 2010 Federal general  
18 election all those ballots cast by absent uniformed services voters and  
19 overseas voters qualified to vote in Guam pursuant to UOCAVA,  
20 including ballots that were transmitted to the voter by email and  
21 Federal Write-in Absentee Ballots, provided such ballots are executed  
22 and sent by November 2, 2010, received by November 15, 2010, and  
23 are otherwise valid.  
24

1 (3) To ensure that UOCAVA voters who received a ballot by mail and by  
2 email will have their ballot validly counted, the Defendants shall  
3 establish a procedure providing which ballot shall be counted if both  
4 ballots are returned, and notify all UOCAVA voters of these rules.

5 (4) The Defendants shall take such steps as are necessary to afford  
6 UOCAVA voters eligible to participate in Guam's November 2, 2010  
7 Federal general election a reasonable opportunity to learn of this  
8 Court's order by sending a notice to every UOCAVA voter.  
9 Defendants shall provide the notice by email or telephonically if such  
10 information is available. The notice shall, at minimum: (a) explain  
11 that the deadline for the ballot to be executed and sent is November 2,  
12 2010; (b) explain that the deadline for receipt of the ballot has been  
13 extended to November 15, 2010; (c) explain the rules for counting the  
14 ballots referenced in the preceding paragraph; and (d) provide  
15 appropriate contact information at the Guam Election Commission for  
16 assistance.

17 (5) Upon the entry of this Order, the Defendants shall issue a press  
18 statement for immediate release, posted immediately on Guam's  
19 election information website, and distributed to the Federal Voting  
20 Assistance Program; International Herald Tribune  
21 (<http://www.iht.com>); USA Today International  
22 (<http://www.usatoday.com>); Military Times Media Group  
23 ([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation  
24 (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes

1 (www.estripes.com); and any other appropriate newspaper or news  
2 media in Guam. The news release shall, at a minimum: (a) announce  
3 that UOCAVA voters may request to receive their absentee ballots by  
4 email and explain how such a request should be made; (b) summarize  
5 this order, including a notice that the deadline for receipt of the ballot  
6 has been extended to November 15, 2010; and (c) provide appropriate  
7 contact information at the Guam Election Commission for assistance.

8 (6) The Defendants shall provide a report to the United States Department  
9 of Justice no later than three business days following entry of this  
10 order concerning the transmittal of UOCAVA absentee ballots. The  
11 report shall (a) certify that absentee ballots were transmitted no later  
12 than October 1, 2010 to all qualified UOCAVA voters whose  
13 applications for ballots have been received and approved by that date;  
14 and (b) indicate the number of requests received and the number of  
15 UOCAVA absentee ballots transmitted, and the method of transmittal  
16 thereof.

17 (7) The Defendants shall file a report with this Court no later than  
18 December 17, 2010 concerning the number of UOCAVA absentee  
19 ballots received and counted for the November 2, 2010 general  
20 election for Federal office. The report will set forth the following  
21 information, categorized by uniformed services overseas voters,  
22 uniformed services voters within the United States, and overseas  
23 civilian voters:  
24

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

4 b. The number of absentee ballots from UOCAVA voters  
5 received and counted after the close of the polls on November  
6 2, 2010 but prior to the close of business on November 15,  
7 2010;

8 c. The number of absentee ballots from UOCAVA voters  
9 received later than the close of business on November 15,  
10 2010; and

11 d. The number of absentee ballots from UOCAVA voters  
12 that were not counted in the general election for Federal office,  
13 for reasons other than late receipt.

14 (8) The Defendants shall take such actions as are necessary to assure  
15 that UOCAVA voters shall have a fair and reasonable opportunity  
16 to participate in future Federal elections, including proposing  
17 legislation and taking any administrative actions needed to fully  
18 remedy the potential future UOCAVA violations arising from  
19 Guam's election schedule and practices. The parties agree to  
20 confer on the progress of these efforts, and Defendants shall  
21 provide a status report to the United States by March 31, 2011.

22 The Court shall retain jurisdiction over this action through December 31, 2012 to enter  
23 such further relief as may be necessary for the effectuation of the terms of this Order and to enter  
24 such relief as may be necessary to abate any UOCAVA violation with respect to future Federal

1 elections caused by Guam's election practices.

2 This order shall apply exclusively to federal elections conducted on Guam and shall not  
3 be construed to have any bearing upon Guam's local elections for local offices.

4 **SO ORDERED.**



**/s/ Frances M. Tydingco-Gatewood**  
**Chief Judge**  
**Dated: Oct 13, 2010**

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14 IN THE DISTRICT COURT OF GUAM  
15 TERRITORY OF GUAM

16 UNITED STATES OF AMERICA,

17 Plaintiff,

18 vs.

19 GOVERNMENT OF GUAM; THE GUAM  
20 ELECTION COMMISSION; and JOHN F.  
BLAS, its Executive Director, in his official  
capacity,

21 Defendants.  
22

**FILED**  
DISTRICT COURT OF GUAM

OCT 06 2010

JEANNE G. QUINATA  
CLERK OF COURT

CIVIL CASE NO. 10-00025

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF UNDER THE  
UNIFORMED AND OVERSEAS  
CITIZENS ABSENTEE VOTING ACT**

COPY

1 The United States of America alleges:

2 1. This action is brought by the Attorney General on behalf of the United States pursuant to  
3 the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff  
4 to 1973ff-7, as amended by the Military and Overseas Voter Empowerment Act, Pub. L. No.  
5 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009) ("MOVE Act"). UOCAVA  
6 provides that absent uniformed services voters and overseas voters ("UOCAVA voters") shall be  
7 permitted "to use absentee registration procedures and to vote by absentee ballot in general,  
8 special, primary, and runoff elections for Federal office." 42 U.S.C. § 1973ff-1. Pursuant to  
9 amendments made by the MOVE Act, UOCAVA requires that states transmit absentee ballots to  
10 UOCAVA voters at least 45 days in advance of an election for Federal office when ballot  
11 requests have been received within 45 days of that election, unless the state receives a hardship  
12 exemption pursuant to UOCAVA. 42 U.S.C. §§ 1973ff-1(a)(8)(A) & (g). The definition of  
13 "state" includes Guam. 42 U.S.C. § 1973ff-6. Guam neither sought nor received a hardship  
14 waiver under UOCAVA for the November 2, 2010 Federal general election.

15 JURISDICTION

16 2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C.  
17 § 1973ff-4, and brings this enforcement action to ensure that Guam's UOCAVA voters will have  
18 sufficient opportunity to receive absentee ballots they have requested and submit marked  
19 absentee ballots in time to be counted for the November 2, 2010 Federal general election.

20 3. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and  
21 2201.

22 DEFENDANTS

23 4. Defendant Government of Guam is responsible for complying with UOCAVA, and  
24 ensuring that validly-requested absentee ballots are sent to UOCAVA voters in accordance with

1 its terms. 42 U.S.C. §§ 1973ff-1 & 1973ff-6.

2 5. Defendant Guam Election Commission is responsible for administering election laws in  
3 Guam and promulgating rules necessary to “carry out the provisions of the” election code. 3  
4 GUAM CODE ANN. § 2103(d). The Commission has “direct and immediate supervision” over  
5 local election officials “designated in accordance with the laws of Guam to perform duties  
6 relative to the conduct of elections.” 3 GUAM CODE ANN. § 2103(a). The Commission is  
7 responsible for the certification of election returns. 3 GUAM CODE ANN. § 11123.

8 6. Defendant John F. Blas is the Executive Director of the Commission and is sued in his  
9 official capacity. He was appointed by the Commission to “administer the election law of  
10 Guam” and to “perform and discharge all of the powers, duties, purposes, functions and  
11 jurisdiction . . . vested in the Commission in accordance with the rules of the Commission.” 3  
12 GUAM CODE ANN. § 2102(a). The Executive Director is the Secretary of the Commission. 3  
13 GUAM CODE ANN. § 2102(b).

14 CAUSE OF ACTION

15 7. Section 102(a)(8)(A) of UOCAVA requires that states transmit validly requested ballots  
16 to UOCAVA voters not later than 45 days before an election for Federal office when the request  
17 is received at least 45 days before the election. 42 U.S.C. § 1973ff-1(a)(8)(A). Section 102(f)(1)  
18 of UOCAVA requires that states establish procedures for at least one method of electronic  
19 transmission of blank ballots to UOCAVA voters who opt for electronic transmission. 42 U.S.C.  
20 § 1973ff-1(f)(1).

21 8. Election officials of Guam have received timely requests for absentee ballots for the  
22 November 2, 2010 Federal general election from voters who are entitled to vote pursuant to the  
23 provisions of UOCAVA.

1 9. The 45th day before the November 2, 2010 Federal general election was September 18,  
2 2010. Upon information and belief, Guam election officials did not complete transmission of all  
3 ballots to UOCAVA voters sooner than October 1, 2010, 32 days before the November 2, 2010  
4 Federal general election.

5 10. Under Guam law, ballots from UOCAVA voters must be received by the close of polls  
6 on election day to be counted. 3 GUAM CODE ANN. §§ 10115 & 10118.

7 11. Guam election officials did not offer any UOCAVA voters the option of choosing to  
8 have their blank ballots transmitted to them electronically until on or around September 24,  
9 2010.

10 12. Defendants' failure to transmit absentee ballots to UOCAVA voters 45 days in advance  
11 of the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A)  
12 of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

13 13. Defendants' failure to timely offer an option of electronic transmission of blank ballots  
14 to UOCAVA voters constitutes a violation of Section 102(f)(1) of UOCAVA. 42 U.S.C.  
15 § 1973ff-1(f)(1).

16 14. An order of this Court is necessary requiring Defendants to take corrective action in order  
17 to protect the rights granted by UOCAVA and to ensure that Guam's UOCAVA voters have  
18 sufficient opportunity to receive, mark, and submit their ballots in time to have them counted for  
19 the November 2, 2010 general election for Federal office.

20 PRAYER FOR RELIEF

21 WHEREFORE, Plaintiff asks this Court to hear this action pursuant to 42 U.S.C.  
22 § 1973ff-4 and 28 U.S.C. § 1345, and:

23 (1) Issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of Guam election  
24 officials to send absentee ballots to UOCAVA voters at least 45 days in advance of the

1 November 2, 2010 general election for Federal office and to timely offer an option of electronic  
2 transmission of absentee ballots to UOCAVA voters violates Sections 102(a)(8)(A) and  
3 102(f)(1) of UOCAVA; and

4 (2) Issue injunctive relief ordering the Defendants, their agents and successors in office,  
5 and all persons acting in concert with them:

6 (a) To take such steps as are necessary to assure that UOCAVA voters shall have  
7 sufficient opportunity to receive, mark, and submit their ballots in time to  
8 have them counted in the November 2, 2010 general election for Federal  
9 office;

10 (b) To take such steps as are necessary to assure that UOCAVA voters shall have  
11 the opportunity to choose to have their blank absentee ballots transmitted to  
12 them electronically;

13 (c) To take such steps as are necessary to afford UOCAVA voters who are  
14 eligible to participate in Guam's November 2, 2010 general election for  
15 Federal office a reasonable opportunity to learn of this Court's order;

16 (d) To provide a report to the United States concerning the transmission, receipt,  
17 and counting of ballots for the November 2, 2010 general election for Federal  
18 office pursuant to this Court's order within 45 days after the election; and

19 (e) To take such other steps as are necessary to assure that Guam conducts its  
20 elections in compliance with UOCAVA in future federal elections.

21 The United States further asks this Court to order such other relief as the interests of  
22 justice may require, together with the costs and disbursements of this action.

1 DATED: October 6, 2010

2 ERIC H. HOLDER, JR.  
3 Attorney General

4 ALICIA A.G. LIMTIACO  
5 United States Attorney  
6 Districts of Guam and NMI

7 *Thomas E. Perez / jpf*  
8 THOMAS E. PEREZ  
9 Assistant Attorney General  
10 Civil Rights Division

11 By:

12 *Mikel W. Schwab*  
13 MIKEL W. SCHWAB  
14 Assistant U.S. Attorney

15 *T. Christian Herren Jr.*  
16 T. CHRISTIAN HERREN JR.  
17 REBECCA WERTZ  
18 LEMA BASHIR  
19 JARED M. SLADE  
20 AMANDA GREGORY  
21 Attorneys, Voting Section  
22 Civil Rights Division  
23  
24

State of Illinois

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 10-cv-06800
v.	)	Judge: Hibbler
	)	
THE STATE OF ILLINOIS;	)	
THE ILLINOIS STATE BOARD OF	)	
ELECTIONS; and DANIEL WHITE,	)	
Executive Director of the Illinois State	)	
Board of Elections,	)	
	)	
Defendants.	)	
	)	

**CONSENT DECREE**

Plaintiff United States of America initiated this action against the State of Illinois, the Illinois State Board of Elections, and Daniel White, the Executive Director of the Illinois State Board of Elections, in his official capacity (collectively, "Defendants"), to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff to 1973ff-7. The United States alleges violations of UOCAVA arising from the failure to (1) transmit absentee ballots to absent uniformed services voters and overseas voters ("UOCAVA voters") from at least 35 Illinois counties by the 45th day before the November 2, 2010 Federal general election; and (2) transmit absentee ballots by electronic means to some UOCAVA voters who requested electronic delivery of their ballots. Absent corrective action, some UOCAVA voters from Illinois will be denied the right granted by Federal law to receive their ballots electronically and will not be provided the time specified under Federal law to receive, mark, and submit their ballots in time to have those ballots counted in the November 2, 2010 Federal general election.

The United States and Defendants, through their respective counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties share the goal of providing UOCAVA voters with sufficient opportunity under Federal law to participate in the November 2, 2010 Federal general election. The parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the UOCAVA violations alleged by the United States. Accordingly, the United States and Defendants stipulate and agree that:

1. This action is brought by the U.S. Attorney General on behalf of the United States pursuant to UOCAVA, 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 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.

2. The U.S. Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4, and this Court has jurisdiction of this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

3. UOCAVA requires the State of Illinois (and therefore, by operation of state law, each of its 110 election authorities, which administer the State’s election laws in their respective jurisdictions) to comply with UOCAVA and to ensure that validly requested absentee ballots are transmitted to UOCAVA voters in accordance with the statute’s requirements. 42 U.S.C. §§ 1973ff-1 & 1973ff-6. Defendant Illinois State Board of Elections (“Board”) is the state body with general supervisory powers over the administration of election laws in Illinois and is comprised of eight members appointed by the Governor. 10 ILCS 5/1A-1. Election authorities

are the elected offices of the county clerk or a Board of Election Commissioners, which is appointed by the Circuit Court in the respective jurisdictions and are responsible for the conduct of the elections, including the administration of absentee voting in their respective jurisdictions. 10 ILCS 5/1-1 et seq. Daniel White is the Executive Director of the Illinois State Board of Elections and is sued in his official capacity.

4. Pursuant to amendments made by the MOVE Act, 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 hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A). Illinois did not seek or obtain a hardship exemption for the November 2, 2010 election.

5. Illinois election authorities received requests for absentee ballots on or before the 45<sup>th</sup> day prior to the November 2, 2010 Federal general election from voters who are entitled to vote pursuant to the provisions of UOCAVA.

6. The deadline for transmission of absentee ballots to UOCAVA voters who had requested them at least 45 days before the November 2, 2010 general election for Federal office was September 18, 2010.

7. Under Illinois law, ballots from UOCAVA voters postmarked by midnight on the day before the election will be counted if received by the 14th day following election day. *See* 10 Ill. Comp. Stat. 5/20-2; 10 Ill. Comp. Stat. 5/20-2.1. For the November 2, 2010 Federal general election, ballots from UOCAVA voters must be postmarked by November 1, 2010 and received by November 16, 2010 in order to be counted.

8. Election authorities in at least 35 Illinois election jurisdictions did not transmit ballots by September 18, 2010 to the UOCAVA voters in those election jurisdictions who requested ballots by that date. Three counties (Boone, Jersey, and St. Clair) transmitted ballots to such voters on October 4, 2010, 16 days late. Two counties (Hancock and Schuyler) transmitted ballots to such voters on October 5, 2010, 17 days late. One county (Massac) transmitted ballots to such voters on October 8, 2010, 20 days late. The other 29 counties transmitted ballots to such voters between 2 and 12 days late; between September 20 and September 30, 2010.

9. The failure to transmit absentee ballots to UOCAVA voters who requested them by the 45th day before the November 2, 2010 Federal general election (September 18, 2010), constitutes a violation of Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A).

10. Pursuant to amendments made by the MOVE Act, UOCAVA requires that states permit UOCAVA voters to designate whether they prefer their ballots to be transmitted by mail or electronically and then to transmit ballots according to the voter's preferred method. 42 U.S.C. §§ 1973ff-1(a)(7), 1973ff-1(f)(1).

11. Some Illinois election authorities did not transmit absentee ballots by electronic means to UOCAVA voters who timely requested electronic delivery of their ballots, and instead sent such ballots to voters by postal mail. Accordingly, some Illinois UOCAVA voters have not yet received absentee ballots electronically for the November 2, 2010 Federal general election.

12. The failure to transmit absentee ballots to UOCAVA voters in accordance with the voters' requested method of electronic delivery for the November 2, 2010 Federal general election constitutes a violation of Sections 102(a)(7) and 102(f)(1) of UOCAVA. 42 U.S.C. §§ 1973ff-1(a)(7), 1973ff-1(f)(1).

13. To ensure that Illinois's UOCAVA voters will have sufficient opportunity under federal law to receive the absentee ballots they have requested (and by the delivery method requested), and to submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election, the parties agree that this Court should enter an order that (a) requires that all UOCAVA voters who properly requested but did not receive transmission of their ballots electronically be provided that opportunity immediately, (b) extends the deadline for receipt of ballots for UOCAVA voters in Boone, Jersey, and St. Clair Counties to November 18, 2010, and for UOCAVA voters in Hancock, Massac, and Schuyler Counties to November 19, 2010; and (c) extends the deadline by which ballots must be postmarked in order to be counted to November 2, 2010 for Boone, Jersey, St. Clair, Hancock, Massac, and Schuyler counties.

14. The parties reserve the right to modify this agreement as necessary, and to seek additional supplemental relief, if information regarding additional UOCAVA violations is discovered.

WHEREFORE, the parties having given their consent, and the terms of the Decree being fair, reasonable, and consistent with the requirements of UOCAVA, it is hereby ORDERED, ADJUDGED, and DECREED by the Court that:

- (1) Defendants shall, upon entry of this decree, order the pertinent election authorities to ensure that all UOCAVA voters who requested to receive their ballots electronically for the November 2, 2010 Federal general election are transmitted their ballot immediately, within one business day of entry of this decree, by the requested electronic method. The information provided with the ballot shall include appropriate instructions explaining the ballot return deadlines and the

option and procedures for returning the ballot in order for it to be counted, including the procedures adopted in paragraph (2) below.

- (2) To ensure that UOCAVA voters who return multiple ballots (by virtue of having received a ballot by mail and electronically) will have their ballot counted, Defendants shall order election authorities to count the ballot that was mailed to the voter. Defendants shall order election authorities to notify all affected UOCAVA voters of this procedure.
- (3) To ensure that Illinois's UOCAVA voters will have sufficient opportunity under Federal law to receive absentee ballots they have requested, and to submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election, Defendants shall order election authorities to count as validly cast ballots in the November 2, 2010 Federal general election all ballots, including Federal Write-In Absentee Ballots, (a) cast by UOCAVA voters from Boone, Jersey, and St. Clair Counties, provided such ballots are postmarked on or before November 2, 2010, received by November 18, 2010, and are otherwise valid; and (b) cast by UOCAVA voters from Hancock, Massac, and Schuyler Counties, provided such ballots are postmarked on or before November 2, 2010, received by November 19, 2010, and are otherwise valid;
- (4) Defendants shall order Massac County's election authority to contact each of Massac County's UOCAVA voters who has not yet returned

his or her ballot and provide those voters with a pre-paid, express means of returning their ballots.

(5) Upon entry of the decree, Defendants shall order all Illinois election authorities to certify that they transmitted ballots to all qualified UOCAVA voters in accordance with UOCAVA's terms.

a) Should Defendants learn that any additional properly and timely requested UOCAVA ballot for the November 2, 2010 Federal general election was not transmitted, they shall immediately order the election authority in question to transmit the ballot to the UOCAVA voter electronically or by express mail delivery (as the voter chooses) and ensure that the voter is provided a pre-paid, express method of returning the ballot. Defendants shall order the election authorities to ensure that these ballots are counted as validly cast ballots in the November 2, 2010 Federal general election, provided such ballots are postmarked on or before November 2, 2010, received by November 19, 2010, and are otherwise valid; and

b) Should Defendants learn that any additional properly and timely requested UOCAVA ballot for the November 2, 2010 Federal general election was transmitted after October 6, 2010, and was transmitted more than two days after the request, they shall order the election authority to immediately contact the voter to offer them a pre-paid, express method of returning the ballot.

Defendants shall order the election authorities to ensure that these ballots are counted as validly cast ballots in the November 2, 2010 Federal general election, provided such ballots are postmarked on or before November 2, 2010, received by November 19, 2010, and are otherwise valid.

Defendants shall promptly notify counsel for the United States of any actions taken in accordance with this paragraph.

- (6) For purposes of this Decree, postmark shall include the date contained on the express mail delivery packaging for ballots returned by express mail delivery (or absent a postmark, the date inserted on the certification, as provided in 10 ILCS 5/20-8(c)).
- (7) To provide an opportunity for UOCAVA voters to learn of this Court's order, upon the entry of this Consent Decree, Defendants shall (a) order the election authorities to notify by email, telephone, or fax all affected voters in Boone, Jersey, St. Clair, Hancock, Massac, and Schuyler Counties for whom they have such contact information of the appropriate deadline and procedures for returning their ballots; and (b) issue for immediate release a press statement, agreed upon by the parties and filed with this Court within one day of entry of this order. Defendants shall post the release immediately on Illinois's State Board of Elections website and order the election authorities to post it on each of the affected county websites, if maintained by such county. Defendants shall distribute the release to the Federal Voting

Assistance Program; International Herald Tribune  
(<http://www.ihf.com>); USA Today International  
(<http://www.usatoday.com>); Military Times Media Group  
([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation  
(<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes  
([www.estripes.com](http://www.estripes.com)); and any other Illinois newspaper or news media  
Defendants choose.

- (8) Defendants shall order the affected election authorities to provide a written certification to the Board that all absentee ballots validly requested by UOCAVA voters by October 3, 2010 have been transmitted by the method the voter requested; such certification shall be provided no later than three business days after the entry of this order. Defendants shall order each election authority to include, in its certification: (a) the number of UOCAVA absentee ballot requests received by September 18, 2010, between September 19, 2010 and October 3, 2010, and between October 3, 2010 and the date each county completed transmitting those ballots; (b) the number of UOCAVA absentee ballot requests, by the requested method of transmittal, for all UOCAVA absentee ballot requests received prior to the date each county completed transmitting those ballots; and (c) by date, the number of UOCAVA ballots transmitted and the method of transmittal thereof. The Board shall file such certifications with this Court within 4 business day after entry of this order.

(9) No later than 3 business days after entry of this order, the Board shall order the affected election authorities to provide written certification to the Board indicating (a) when and by what means the UOCAVA voters were given notice of the extension of the receipt deadline for their ballots, and (b) when and by what means the UOCAVA voters in Massac County were provided with a pre-paid, express means of returning their ballots. The Board shall file such certifications with this Court no later than 4 business day after entry of this order.

(10) Defendants shall order the election authorities to provide the Board, by no later than December 10, 2010, written certification of the following information, categorized by uniformed services overseas voters, uniformed services voters within the United States, and overseas civilian voters:

a. The number of absentee ballots from UOCAVA voters received by each election jurisdiction before the close of the polls on November 2, 2010 and counted;

b. The number of absentee ballots from UOCAVA voters received by each election jurisdiction after the close of polls on November 2, 2010, but prior to the close of business on November 16, 2010 and counted;

c. The number of absentee ballots from the affected UOCAVA voters in Boone, Jersey, and St. Clair Counties received and counted after the expiration of the deadline for

receipt of absentee ballots on November 16, 2010 but prior to the close of business on November 18, 2010, broken down by county;

d. The number of absentee ballots from the affected UOCAVA voters in Hancock, Massac, and Schuyler Counties received and counted after the expiration of the deadline for receipt of absentee ballots on November 16, 2010 but prior to the close of business on November 19, 2010, broken down by county;

e. The number of absentee ballots from the affected UOCAVA voters in Boone, Jersey, and St. Clair Counties received by each county later than the close of business on November 18, 2010;

f. The number of absentee ballots from the affected UOCAVA voters in Hancock, Massac, and Schuyler Counties received by each county later than the close of business on November 19, 2010;

g. The number of absentee ballots from UOCAVA voters received by each election jurisdiction that were not counted in the general election for Federal office, for reasons other than late receipt, and the reasons such ballots were not counted.

The Board shall file such certifications with this Court by December 17, 2010.

- (11) The Defendants shall take all reasonable steps necessary to provide UOCAVA voters a fair and reasonable opportunity to participate in future Federal elections, including ordering the election authorities to alter their election practices. The Defendants shall undertake an investigation to determine the cause of the violation of UOCAVA, which may include ordering the election authorities to determine the cause of the late mailed ballots and failure to transmit ballots electronically in accordance with UOCAVA voters' requests, and report such findings to the Board. The Defendants shall take any administrative or other actions, including recommending legislation, needed to prevent future UOCAVA violations. The parties shall confer on the progress of these efforts and Defendants shall provide a status report to the United States by March 15, 2011.
- (12) The Election Assistance Commission having advised Defendants that it is permissible to use funds available from the Federal Help America Vote Act to pay for postage costs associated with express mail delivery of UOCAVA ballots, the State Board of Elections shall use such funds for that purpose.
- (13) The Defendants shall take all reasonable steps necessary to ensure that Illinois election authorities comply with the requirements of this Consent Decree, including formal and

informal follow-up action and directives and any necessary legal action.

(14) In the event an election authority fails to comply with any requirement of this Consent Decree, including any required Board order, any party may seek relief from this Court to compel compliance by the election authorities and any other relief deemed appropriate.

(15) Nothing in this consent decree shall be construed to amend or modify the order entered by the U.S. District Court, Northern District of Illinois on August 2, 2010 in *Judge v. Quinn*, No. 09 C 1231.

The Court shall retain jurisdiction over this action through December 31, 2012 to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree and to enter such relief as may be necessary to abate any UOCAVA violation with respect to future Federal elections.

Date: October 22, 2010

The undersigned agree to entry of this Consent Decree.

For the Plaintiff:

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PATRICK J. FITZGERALD  
United States Attorney  
Northern District of Illinois

THOMAS E. PEREZ  
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Civil Rights Division

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For the Defendants:

LISA MADIGAN  
Attorney General of Illinois

State Board of Elections

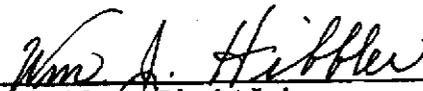
By: 

Title: Executive Director

Date: October 21, 2010

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Facsimile: (312) 814-4425

SO ORDERED this 21<sup>st</sup> day of OCTOBER, 2010.

  
United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No.
v.	)	
	)	
THE STATE OF ILLINOIS;	)	
THE ILLINOIS STATE BOARD OF	)	
ELECTIONS; and DANIEL WHITE,	)	
Executive Director of the Illinois State	)	
Board of Elections,	)	
	)	
	)	
Defendants.	)	
	)	
	)	
_____	)	

**COMPLAINT**

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States pursuant to 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 requires 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.

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4, and brings this enforcement action to ensure that Illinois’s UOCAVA voters have sufficient opportunity to receive absentee ballots they have requested in accordance with federal

law and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election.

3. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

4. Defendant State of Illinois 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, 1973ff-6.

5. Defendant Illinois State Board of Elections is the state body with general supervisory powers over the administration of election laws in Illinois. 10 Ill. Comp. Stat. 5/1A-1. As such, the Illinois State Board of Elections is responsible for Illinois's compliance with UOCAVA.

6. Daniel White is the Executive Director of the Illinois State Board of Elections and is sued in his official capacity.

7. Pursuant to amendments made by the MOVE Act, 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 hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8). Illinois did not seek or obtain a hardship exemption for the November 2, 2010 election.

8. Illinois election officials received timely 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.

9. The 45th day before the November 2, 2010 Federal general election was September 18, 2010.

10. Under Illinois law, ballots from UOCAVA voters postmarked by midnight on the day before the election will be counted if received by the 14th day following election day. *See* 10 Ill. Comp. Stat. 5/20-2; 10 Ill. Comp. Stat. 5/20-2.1. For the November 2, 2010 Federal general election, ballots from UOCAVA voters must be postmarked by November 1, 2010 and received by November 16, 2010.

11. Despite the September 18, 2010 deadline mandated by federal law, election officials in at least 35 Illinois counties nonetheless failed to transmit ballots by September 18, 2010 to the UOCAVA voters in those counties who validly requested ballots by that date. Upon information and belief, 29 of those counties transmitted ballots between 2 and 12 days late, between September 20 and September 30, 2010. Three counties transmitted ballots on October 4, 2010, 16 days late. Two counties transmitted ballots on October 5, 2010, 17 days late. One county transmitted ballots on October 8, 2010, 20 days late.

12. Defendants' failure to transmit absentee ballots at least 45 days in advance of the November 2, 2010 Federal general election to Illinois's UOCAVA voters who had requested ballots by that date constitutes a violation of Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

13. Pursuant to amendments made by the MOVE Act, UOCAVA requires that states permit UOCAVA voters to designate whether they prefer their ballots be transmitted by mail or electronically and then transmit ballots according to the voter's preferred method. 42 U.S.C. §§ 1973ff-1(a)(7), 1973ff-1(f)(1).

14. Upon information and belief, some Illinois counties did not transmit absentee ballots by electronic means to UOCAVA voters who timely requested electronic delivery of their ballots, and instead sent such ballots to voters by postal mail. Accordingly, some Illinois UOCAVA

voters were not permitted to receive absentee ballots electronically for the November 2, 2010 election.

15. Defendants' failure to transmit absentee ballots to UOCAVA voters in accordance with the voters' requested method of electronic delivery for the November 2, 2010 Federal general election constitutes a violation of Sections 102(a)(7) and 102(f)(1) of UOCAVA. 42 U.S.C. §§ 1973ff-1(a)(7), 1973ff-1(f)(1).

16. An order of this Court is necessary to require Defendants to take corrective action in order to protect the rights granted by UOCAVA and to ensure that Illinois's UOCAVA voters have sufficient opportunity to receive, mark, and submit their ballots in time to have them counted for the November 2, 2010 general election for Federal office.

WHEREFORE, Plaintiff asks this Court to hear this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345, and:

(1) Issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of Illinois election officials to transmit absentee ballots to UOCAVA voters at least 45 days in advance of the November 2, 2010 general election for Federal office and to transmit absentee ballots electronically when so requested violates Sections 102(a)(8)(A), 102(a)(7), and 102(f)(1) of UOCAVA; and

(2) Issue injunctive relief ordering the Defendants, their agents and successors in office, and all persons acting in concert with them:

(a) To immediately take such steps as are necessary to ensure that UOCAVA voters who requested electronic delivery of their ballots for the November 2, 2010 general election for Federal office have the opportunity to receive a ballot by their preferred method of delivery;

- (b) To take such steps as are necessary to ensure that UOCAVA voters have sufficient opportunity to receive, mark, and submit their ballots in time to have them counted in the November 2, 2010 general election for Federal office;
- (c) To take such steps as are necessary to afford UOCAVA voters who are eligible to participate in Illinois's November 2, 2010 general election for Federal office a reasonable opportunity to learn of this Court's order;
- (d) To provide reports concerning the transmission, receipt, and counting of ballots for the November 2, 2010 general election for Federal office pursuant to this Court's order; and
- (e) To take such other steps as are necessary to ensure that Illinois conducts its elections in compliance with UOCAVA in future federal elections.

The United States further asks this Court to order such other relief as the interests of justice may require, together with the costs and disbursements of this action.

Date: October 22, 2010

Respectfully submitted,

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Northern District of Illinois

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**State of New Mexico**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 10-cv-968
v.	)	
	)	
THE STATE OF NEW MEXICO and	)	
NEW MEXICO SECRETARY OF STATE	)	
MARY HERRERA, in her official capacity,	)	
	)	
Defendants.	)	
	)	
_____	)	

**CONSENT DECREE**

Plaintiff United States of America (“United States”) initiated this action against Defendants to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7. The United States’ Complaint alleges a violation of UOCAVA arising from the Defendants’ acknowledgement that absentee ballots from at least six New Mexico counties—Curry, Los Alamos, McKinley, Rio Arriba, Sandoval, and Taos—were not timely transmitted to absent uniformed services voters and overseas voters (“UOCAVA voters”) by the 45th day before the November 2, 2010 Federal general election, as required by UOCAVA. New Mexico concedes that, despite diligent efforts, ballots were not transmitted to UOCAVA voters in Curry, Los Alamos, McKinley, Rio Arriba, Sandoval, and Taos Counties by the 45-day deadline established in UOCAVA. Accordingly, without this Consent Decree, some of New Mexico’s UOCAVA voters will not be provided the time specified under Federal law to receive, mark, and submit their ballots in time to have those ballots counted in the November 2, 2010 Federal general election.

The United States and Defendants, through their respective counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties share the goal of providing UOCAVA voters with sufficient opportunity under Federal law to participate in the November 2, 2010 Federal general election. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the UOCAVA violation alleged by the United States. Accordingly, the United States and Defendants stipulate and agree that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to UOCAVA, 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 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.

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4, and this Court has jurisdiction of this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

3. Defendant State of New Mexico is responsible for complying with UOCAVA and ensuring that validly requested absentee ballots are sent to UOCAVA voters in accordance with the statute’s requirements. 42 U.S.C. § 1973ff-1 & 1973ff-6.

4. Defendant Mary Herrera is New Mexico's chief state election officer and responsible for the State's compliance with UOCAVA. NMSA 1978, § 1-2-1.

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).

6. Failure to transmit absentee ballots to those UOCAVA voters by the 45th day before the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A) of UOCAVA.

7. New Mexico received timely 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.

8. The deadline for New Mexico to transmit absentee ballots to UOCAVA voters who had requested them 45 days before the November 2, 2010 election for federal office was September 18, 2010.

9. Under New Mexico law, ballots from UOCAVA voters must be received by 7 pm on election day to be counted. NMSA 1978, § 1-6-10(B).

10. Election officials in six New Mexico counties—Curry, Los Alamos, McKinley, Rio Arriba, Sandoval, and Taos—did not transmit ballots by September 18, 2010 to the UOCAVA voters in those counties who validly requested ballots by that date. Instead, those ballots were transmitted to UOCAVA voters two to four days late on September 20-22, 2010. Depending on

the preference of the voter, the ballots were either sent electronically or mailed by the U.S. Postal Service. At least 102 ballots were transmitted late, 50 by postal mail.

11. Defendants' failure to transmit absentee ballots to UOCAVA voters who requested ballots 45 days in advance of the November 2, 2010 Federal general election by September 18, 2010, constitutes a violation of Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

12. To ensure that New Mexico's UOCAVA voters will have sufficient opportunity under Federal law to receive the absentee ballots they have requested, and to submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election, the parties agree that this Court should enter an order that extends the deadline for receipt of ballots for UOCAVA voters by four days after the election. Under this extension, absentee ballots from all UOCAVA voters who requested ballots by September 18, 2010 that are executed and sent by November 2, 2010 and received by 7 pm on November 6, 2010 will be accepted and tabulated in the final Federal general election results.

WHEREFORE, the parties having freely given their consent, and the terms of the Decree being fair, reasonable, and consistent with the requirements of UOCAVA, it is hereby ORDERED, ADJUDGED, AND DECREED that:

- (1) To ensure that New Mexico's UOCAVA voters will have sufficient opportunity under Federal law to receive absentee ballots they have requested, and to submit marked absentee ballots in time to be counted for the

November 2, 2010 Federal general election, Defendants shall count as validly cast ballots in the November 2, 2010 Federal general election all ballots, including Federal Write-In Absentee Ballots, cast by UOCAVA voters who requested ballots by September 18, 2010, provided such ballots are executed and sent by November 2, 2010, received by 7 pm on November 6, 2010, and are otherwise valid.

- (2) To provide an opportunity for UOCAVA voters to learn of this Court's order, upon the entry of this Consent Decree, the Defendants shall issue a press statement for immediate release, posted immediately on New Mexico's election information website, and distributed to the Federal Voting Assistance Program; International Herald Tribune (<http://www.iht.com>); USA Today International (<http://www.usatoday.com>); Military Times Media Group ([cvinch@militarytimes.com](mailto:cvinch@militarytimes.com)); Overseas Vote Foundation (<http://www.overseasvotefoundation.org/intro/>); Stars and Stripes ([www.estripes.com](http://www.estripes.com)); and any other appropriate newspaper or news media. The news release shall, at a minimum: (a) summarize this order, including notice that the deadline for receipt of all ballots from UOCAVA voters who requested ballots by September 18, 2010 has been extended to November 6, 2010, and (b) provide appropriate contact information for assistance.

- (3) The Defendants shall provide a report to the United States no later than October 22, 2010 indicating when and by what means the UOCAVA voters were given notice of the extension of the receipt deadline for their ballots.
- (4) The Defendants shall file a report with this Court no later than December 17, 2010 concerning the number of UOCAVA absentee ballots, received and counted for the November 2, 2010 general election for Federal office. The report will set forth the following information, categorized by uniformed services overseas voters, uniformed services voters within the United States, and overseas civilian voters:
  - a. The number of absentee ballots from UOCAVA voters received by each county before the close of the polls on November 2, 2010 and counted;
  - b. The number of absentee ballots from UOCAVA voters received and counted by each county after the close of the polls on November 2, 2010 but prior to 7 pm on November 6, 2010, broken down by county;
  - c. The number of absentee ballots from UOCAVA voters received by each county later than 7 pm on November 6, 2010; and

d. The number of absentee ballots from UOCAVA voters received by each county that were not counted in the general election for Federal office, for reasons other than late receipt.

(5) The Defendants shall take such actions as are necessary to ensure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including determining the cause of the late mailed ballots and taking any administrative or other actions needed to reduce the potential for future UOCAVA violations arising from New Mexico's or the individual counties' election practices. The parties agree to confer on the progress of these efforts, and Defendants shall provide a status report to the United States by March 15, 2011.

The Court shall retain jurisdiction over this action through June 30, 2011 to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree and to enter such relief as may be necessary to abate any UOCAVA violation with respect to future Federal elections caused by New Mexico's election practices.

Date: October 12, 2010

The undersigned agree to entry of this Consent Decree.

For the Plaintiff:

ERIC H. HOLDER, JR.  
Attorney General

KENNETH J. GONZALES  
United States Attorney  
District of New Mexico

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

*/s/ Richard Dellheim*

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For the Defendants:

GARY K. KING  
New Mexico Attorney General

/s/ Tania Maestas  
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Assistant Attorney General  
Counsel for the New Mexico Secretary of State  
PO Drawer 1508  
Santa Fe, New Mexico 87504-1508  
Telephone: (505) 827-6024  
Facsimile: (505) 827-6478

SO ORDERED this 14th day of October, 2010.

  
MARTHA VAZQUEZ  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 10-cv-968
v.	)	
	)	
THE STATE OF NEW MEXICO and	)	
NEW MEXICO SECRETARY OF STATE	)	
MARY HERRERA, in her official capacity,	)	
	)	
Defendants.	)	
	)	
	)	
	)	

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**COMPLAINT**

The United States of America alleges:

1. This action is brought by the Attorney General on behalf of the United States pursuant to 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 requires 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. Pursuant to amendments made by the MOVE Act, UOCAVA requires that states transmit absentee ballots to UOCAVA voters at least 45 days in advance of an election for Federal office when ballot requests have been received within 45 days of that election, unless the state receives a hardship exemption pursuant to UOCAVA. 42 U.S.C. §§ 1973ff-1(a)(8) & (g). New Mexico neither

sought nor received a hardship waiver under UOCAVA for the November 2, 2010 Federal general election.

2. The Attorney General is authorized to enforce the provisions of UOCAVA, 42 U.S.C. § 1973ff-4, and brings this enforcement action to ensure that New Mexico's UOCAVA voters have sufficient time to receive absentee ballots they have requested and submit marked absentee ballots in time to be counted for the November 2, 2010 Federal general election.

3. This Court has jurisdiction pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. §§ 1345 and 2201.

4. Defendant State of New Mexico 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 & 1973ff-6.

5. Defendant Mary Herrera is sued in her official capacity as the New Mexico Secretary of State. As Secretary of State, Herrera is New Mexico's chief state election officer and responsible for the State's compliance with UOCAVA. N.M. Stat. Ann. § 1-2-1.

6. Section 102(a)(8) 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 hardship exemption is obtained pursuant to Section 102(g) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8). New Mexico did not seek or obtain any such hardship exemption for the November 2, 2010 election.

7. New Mexico election officials received timely 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.

8. The 45th day before the November 2, 2010 Federal general election was September 18, 2010.

9. Under New Mexico law, ballots from UOCAVA voters must be received by 7 pm on election day to be counted. N.M Stat. Ann. § 1-6-10(B).

10. Election officials in six New Mexico counties—Curry, Los Alamos, McKinley, Rio Arriba, Sandoval, and Taos—did not transmit ballots by September 18, 2010 to the UOCAVA voters in those counties who validly requested ballots by that date. Instead, those ballots were transmitted to UOCAVA voters two to four days late on September 20-22, 2010. Depending on the preference of the voter, the ballots were either sent electronically or mailed by the U.S. Postal Service. At least 102 ballots were transmitted late; 50 of those by postal mail.

11. Failure to transmit absentee ballots to the UOCAVA voters in Curry, Los Alamos, McKinley, Rio Arriba, Sandoval, and Taos Counties 45 days in advance of the November 2, 2010 Federal general election constitutes a violation of Section 102(a)(8)(A) of UOCAVA. 42 U.S.C. § 1973ff-1(a)(8)(A).

12. An order of this Court is necessary to require Defendants to take corrective action in order to protect the rights granted by UOCAVA and to ensure that the UOCAVA voters have sufficient opportunity to receive, mark, and submit their ballots in time to have them counted for the November 2, 2010 general election for Federal office.

WHEREFORE, Plaintiff asks this Court to hear this action pursuant to 42 U.S.C. § 1973ff-4 and 28 U.S.C. § 1345, and:

(1) Issue a declaratory judgment under 28 U.S.C. § 2201 that the failure of New Mexico election officials to send absentee ballots to UOCAVA voters at least 45 days in advance of the

November 2, 2010 general election for Federal office violates Section 102(a)(8)(A) of UOCAVA; and

(2) Issue injunctive relief ordering the Defendants, their agents and successors in office, and all persons acting in concert with them:

- (a) To count as validly cast ballots in the November 2, 2010 general election for Federal office all ballots cast by UOCAVA voters who requested ballots by September 18, 2010, provided such ballots are executed by November 2, 2010, received by 7 pm on November 6, 2010, and are otherwise valid;
- (b) To take all additional steps as are necessary to ensure that UOCAVA voters shall have sufficient time to receive, mark, and submit their ballots in time to have them counted in the November 2, 2010 general election for Federal office;
- (c) To take such steps as are necessary to afford UOCAVA voters who are eligible to participate in New Mexico's November 2, 2010 general election for Federal office a reasonable opportunity to learn of this Court's order;
- (d) To provide a report to the United States concerning the transmission, receipt, and counting of ballots for the November 2, 2010 general election for Federal office pursuant to this Court's order within 45 days after the election; and
- (e) To take such other steps as are necessary to assure that New Mexico conducts its elections in compliance with UOCAVA in future federal elections.

The United States further asks this Court to order such other relief as the interests of justice may require, together with the costs and disbursements of this action.

Date: October 12, 2010

ERIC H. HOLDER, JR.  
Attorney General

KENNETH J. GONZALES  
United States Attorney  
District of New Mexico

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

/s/ Richard Dellheim  
T. CHRISTIAN HERREN JR.  
REBECCA WERTZ  
RICHARD DELLHEIM  
JUSTIN WEINSTEIN-TULL  
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State of Kansas

**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.

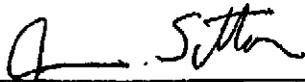
**F. General**

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:

FOR THE UNITED STATES:

THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division



T. CHRISTIAN HERREN JR.

REBECCA J. WERTZ

ABEL GOMEZ

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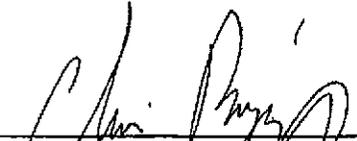
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FOR THE STATE OF KANSAS AND THE KANSAS SECRETARY OF STATE:

 10/19/10

CHRIS BIGGS  
Secretary of State  
State of Kansas  
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120 SW 10th Avenue  
Topeka, KS 66612-1594  
(785) 296-4564

State of Mississippi



U.S. Department of Justice  
Civil Rights Division

Voting Section - NWB  
950 Pennsylvania Ave, NW  
Washington, DC 20530

October 15, 2010

**VIA EMAIL AND FIRST CLASS MAIL**

The Honorable C. Delbert Hosemann, Jr.  
Secretary of State  
P.O. Box 136  
Jackson, Mississippi 39205-0136

Dear Secretary Hosemann:

This letter confirms the steps your office ("the Secretary" or "the Secretary's Office") has indicated it will take to remedy the State of Mississippi's violation of Section 102(a)(8) of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff to 1973ff-7. 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. Pursuant to amendments 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 also provides that UOCAVA voters who request an absentee ballot at least 45 days prior to a federal election are to be sent ballots (by mail or electronically) no later than 45 days before the election. 42 U.S.C. § 1973ff-1(a)(8)(A). For the November 2, 2010 Federal general election the 45 day deadline for sending UOCAVA ballots fell on September 18, 2010.

Following inquiries from the Department of Justice ("the Department") regarding Mississippi's compliance with Section 102(a)(8)(A) of UOCAVA, the Secretary's Office reported that the ballots of 228 UOCAVA voters from 22 Mississippi counties who had requested ballots on or before September 18, 2010 were not sent out at least 45 days before the November 2, 2010 election. After discovering the failure of these 22 counties to timely send absentee ballots to UOCAVA voters, the Secretary ensured that all late UOCAVA ballots were transmitted to the voters by September 22, 2010.

The Secretary has advised that UOCAVA voters in the 22 counties will receive additional time to submit their ballots. Mississippi law requires that ballots of absentee voters be received by election officials by 5:00 p.m. the day prior to the election. Miss. Code Ann. § 23-15-637. A Mississippi Administrative Rule filed May 11, 2007, requires ballots of overseas active-duty military voters to be received by election officials by 7:00 p.m. on the day of the election. However, the Secretary, through the authority granted by Miss. Code Ann. § 23-15-701, S.B. No. 2642 (2010), and Miss. Code Ann. § 25-43-1.101, has promulgated a Temporary Administrative Rule, filed October 7, 2010, which extends the deadline for receipt of UOCAVA ballots in the affected counties to 7:00 p.m. on November 8, 2010 and instructs election officials in the affected counties to count the ballots of all UOCAVA voters if the ballots are received before 7 p.m. on November 8, 2010. The October 7, 2010 Administrative Rule was submitted to the

Attorney General for review pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c, and on October 15, 2010 the Attorney General interposed no objection to the change. A copy of the determination letter is enclosed.

The Secretary's Office has agreed to contact the 228 UOCAVA voters by email, telephone, or express mail to advise them that their ballots will be accepted until 7:00 p.m. on November 8, 2010. The Secretary's Office will also provide these voters with the appropriate contact information for election officials who can assist them with any voting-related questions or concerns they may have. The Secretary's Office will also distribute a press release and post a notice on its website that will describe the ballot receipt deadline extension.

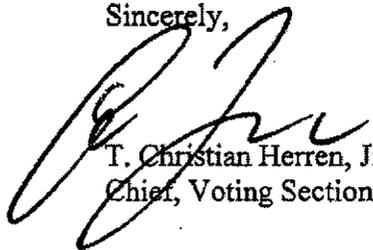
In addition, the Secretary has agreed to keep the Department apprised of its efforts to remedy the aforementioned UOCAVA violations by, no later than December 1, 2010, reporting to the Department the following: the number of the affected UOCAVA ballots returned; the date each ballot was received; and whether the ballots were counted.

Finally, the Secretary will take all necessary actions to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including determining the cause of the late mailed ballots and taking any administrative or other actions to eliminate the potential for future UOCAVA violations arising from Mississippi's or the individual counties' election practices. The Secretary also has agreed to submit a report identifying the causes of the late mailed ballots to UOCAVA voters and detailing the progress of the State's remedial efforts to the Department by May 16, 2011.

These measures have been undertaken by the State to remedy the late transmission of the ballots of UOCAVA voters who submitted absentee ballot requests by September 18, 2010. If each of these measures is fully implemented, they will provide an appropriate remedy for the UOCAVA violation associated with the late transmission of the UOCAVA ballots for the November 2, 2010 general election.

We appreciate your cooperation in our efforts to enforce UOCAVA and the MOVE Act.

Sincerely,



T. Christian Herren, Jr.  
Chief, Voting Section

Enclosure

cc: Corey Wilson, Chief of Staff, Office of the Secretary of State  
Liz Bolin, Senior Attorney, Office of the Secretary of State, Elections Division  
Margarette L. Meeks, Special Assistant Attorney General



U.S. Department of Justice  
Civil Rights Division

TCH:RSB:RPL:TAL:tst  
DJ 166-012-3  
2010-4057

Voting Section - NWB  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

October 15, 2010

Margarette L. Meeks, Esq.  
Special Assistant Attorney General  
P.O. Box 220  
Jackson, Mississippi 39205-0220

Dear Ms. Meeks:

This refers to the 2007 administrative rule, filed on May 11, 2007, regarding the Secretary of State's exercise of emergency powers concerning absentee voting and registration of military personnel and the Secretary of State's temporary administrative rule, filed on October 7, 2010, for the extension of the deadline to receive UOCAVA absentee ballots for the November 2, 2010, general election in specified counties for the State of Mississippi, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c. We received your submission on October 8, 2010.

On October 11, 2006, the Attorney General interposed no objection to the change contained in the 2007 administrative rule. (A copy of our letter is enclosed.) Accordingly, no further determination by the Attorney General is required or appropriate under Section 5. Procedures for the Administration of Section 5 of the Voting Rights Act of 1965, 28 C.F.R. 51.35.

The Attorney General does not interpose any objection to the remaining specified change. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. 28 C.F.R. 51.41 and 51.43.

Sincerely,

T. Christian Herren, Jr.  
Chief, Voting Section

Enclosure

State of Nevada



U.S. Department of Justice  
Civil Rights Division

Voting Section - NWB  
930 Pennsylvania Ave, NW  
Washington, DC 20530

October 4, 2010

**VIA EMAIL AND FACSIMILE**

The Honorable Ross Miller  
Secretary of State  
101 North Carson Street, Suite 3  
Carson City, Nevada 89701

Dear Secretary Miller:

This letter confirms the steps your office ("the Secretary" or "the Secretary's Office") has indicated it will take to remedy the State of Nevada's violation of Section 102(a)(8) of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff to 1973ff-7. 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. Pursuant to amendments 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 also provides that UOCAVA voters who request an absentee ballot at least 45 days prior to a federal election are to be sent ballots (by mail or electronically) no later than 45 days before the election. 42 U.S.C. § 1973ff-1(a)(8). For the November 2, 2010 Federal general election the 45 day deadline for sending UOCAVA ballots fell on September 18, 2010.

Following inquiries from the Department of Justice ("the Department") regarding Nevada's compliance with Section 102(a)(8) of UOCAVA, the Secretary's office reported that the ballots of 34 UOCAVA voters from Elko County who had requested ballots on or before September 18, 2010 were not sent out at least 45 days before the November 2, 2010 election. After discovering Elko County's failure to timely send absentee ballots to UOCAVA voters, the Secretary ensured that the affected Elko County UOCAVA voters were sent absentee ballots by email or expedited mail, and all of the ballots were sent to voters by September 23, 2010. Absentee ballots in Nevada are normally mailed by first-class U.S. mail. Nev. Rev. Stat. § 239.323(1). The Secretary also directed the Elko County Clerk's Office to contact the affected UOCAVA voters to confirm that their ballots have been received and to advise the voters of the different methods available to return the ballot. The Secretary has advised that as of this date, 4 of these Elko County voters have returned their ballots to the County Clerk.

In addition, the Secretary has advised that the affected Elko County UOCAVA voters will receive additional time to submit their ballots and will receive notice of the additional time. Nevada law provides that all absentee ballots must be received by elections officials prior to 7 p.m. on election day if they are to be accepted. Nev. Rev. Stat. § 293.317. However, the

Secretary, through the authority granted by Nevada Revised Statutes § 293.247, has drafted and provided us with a regulation, instructing the Elko County clerk to count the ballots of UOCAVA voters who requested ballots on or before September 18, 2010 if the ballots are received before 5 p.m. on November 8, 2010, which provides six additional days for receipt of the ballots. The regulation will become effective once approved by the Governor's office.

The Secretary will also afford eligible UOCAVA voters a reasonable opportunity to learn of the remedial measures by giving notice to the affected Elko County UOCAVA voters that: (1) the deadline for the ballots to be executed and sent is November 2, 2010; and (2) the deadline for receipt of ballots from such voters has been extended to 5 p.m. on November 8, 2010. Such notices will include appropriate contact information within the Secretary's office for assistance and will be delivered telephonically and/or via the method used to send the voter's absentee ballot.

In addition, the Secretary will also keep the Department apprised of its efforts to remedy the aforementioned UOCAVA violations by: (1) informing the Department how and when each voter was notified of the remedial measures, by October 15, 2010; and (2) informing the Department of the number of Elko County UOCAVA ballots returned, when each ballot was received and whether the ballots were counted, no later than December 1, 2010.

These measures have been undertaken by the State to remedy the late transmission of the ballots of Elko County UOCAVA voters who submitted absentee ballot requests by September 18, 2010. If each of these measures is fully implemented, they will provide an appropriate remedy for the UOCAVA violation associated with the late transmission of the Elko County UOCAVA ballots for the November 2, 2010 general election.

We appreciate your cooperation in our efforts to enforce UOCAVA and the MOVE Act.

Sincerely,



F. Christian Herren, Jr.  
Chief, Voting Section

cc: Nicole Lamboley, Chief Deputy Secretary of State  
Matt Griffin, Deputy Secretary of State for Elections

State of North Dakota



U.S. Department of Justice

Civil Rights Division

*Voting Section - NWB  
950 Pennsylvania Ave, NW  
Washington, DC 20530*

October 8, 2010

**VIA EMAIL AND FACSIMILE**

The Honorable Alvin A. Jaeger  
Secretary of State  
State of North Dakota  
600 E Boulevard Ave.  
Dept. 108, 1<sup>st</sup> Floor  
Bismarck, ND 58505-0500

Dear Secretary Jaeger:

This letter confirms the steps your office ("the Secretary" or "the Secretary's Office") has indicated it will take to remedy the State of North Dakota's violation of Section 102(a)(8) of the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), 42 U.S.C. §§ 1973ff to 1973ff-7. 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. Pursuant to amendments 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 also provides that UOCAVA voters who request an absentee ballot at least 45 days prior to a federal election are to be sent ballots (by mail or electronically) no later than 45 days before the election. 42 U.S.C. § 1973ff-1(a)(8). For the November 2, 2010 Federal general election the 45 day deadline for sending UOCAVA ballots fell on September 18, 2010.

Following inquiries from the Department of Justice ("the Department") regarding North Dakota's compliance with Section 102(a)(8) of UOCAVA, the Secretary's office reported that the ballots of 52 UOCAVA voters from 13 North Dakota counties who had requested ballots on or before September 18, 2010 were not sent out at least 45 days before the November 2, 2010 election. After discovering the failure of these 13 counties to timely send absentee ballots to UOCAVA voters, the Secretary urged the counties to mail the ballots, and ensured that all UOCAVA ballots were transmitted to the voters by September 24, 2010.

North Dakota canvassing boards are required to meet to canvass the election results "not earlier than the third day following each election, but not later than six days after each election." N.D. Cent. Code Ann. § 16.1-15-17 (West 2009). Accordingly, the state's UOCAVA voters, whose absentee ballot envelopes are postmarked before the election date, have a three to six day window to return their ballots after election day. The Secretary has confirmed that 12 counties that failed to meet the UOCAVA ballot mailing deadline have set November 8, 2010 as the

meeting date for their canvassing boards, thus guaranteeing that the ballots of the affected UOCAVA voters will have a minimum 45 day ballot transit time. The thirteenth county, Cavalier County, has affirmed that it will hold the canvassing meeting on November 8, 2010 only if its one UOCAVA voter has not returned his or her ballot before election day.

The Secretary's Office has contacted the affected UOCAVA voters by e-mail or mail to advise them that their ballots will be accepted until November 8, 2010, if they are postmarked before election day. The Secretary's Office has also provided these voters with the appropriate contact information for election officials who can assist them with any voting-related questions or concerns they may have.

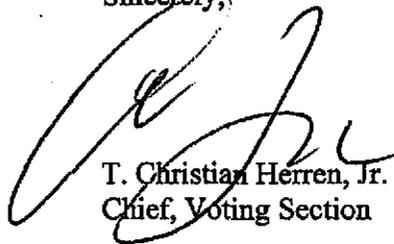
In addition, the Secretary has agreed to keep the Department apprised of its efforts to remedy the aforementioned UOCAVA violations by informing the Department, no later than December 1, 2010, of the number of the affected UOCAVA ballots returned, the date each ballot was received, and whether the ballots were counted.

Finally, the Secretary will take all necessary actions to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including determining the cause of the late mailed ballots and taking any administrative or other actions to eliminate the potential for future UOCAVA violations arising from North Dakota's or the individual counties' election practices. The Secretary also has agreed submit a report identifying the causes of the late mailed ballots to UOCAVA voters and detailing the progress of the State's remedial efforts to the Department by May 15, 2011.

These measures have been undertaken by the State to remedy the late transmission of the ballots of UOCAVA voters who submitted absentee ballot requests by September 18, 2010. If each of these measures is fully implemented, they will provide an appropriate remedy for the UOCAVA violation associated with the late transmission of the UOCAVA ballots for the November 2, 2010 general election.

We appreciate your cooperation in our efforts to enforce UOCAVA and the MOVE Act.

Sincerely,



T. Christian Herren, Jr.  
Chief, Voting Section

cc: Jim Silrum, Deputy Secretary of State  
John Fox, Assistant Attorney General

# Commonwealth of Virginia

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 v. ) Case No. 3:08CV709  
 )  
 JEAN CUNNINGHAM, et al., )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )

**CONSENT DECREE**

Plaintiff United States of America initiated this action to enforce the requirements of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-6. On October 15, 2009, this Court entered an order finding that the Commonwealth of Virginia and the Virginia State Board of Elections (“Defendants”) violated UOCAVA by failing to mail timely-requested absentee ballots to UOCAVA voters 30 days or more before the November 4, 2008 general federal election, and ordered the Defendants to count as validly-cast all timely-requested, but late-mailed and otherwise-valid absentee ballots that were received by local electoral boards and registrars within 30 days of the close of polls on November 4, 2008.

On September 10, 2010, this Court ordered the parties to discuss “the creation of an appropriate, functional future compliance plan.” Order on Perm. Rel. at 4. Accordingly, the parties hereby agree to the entry of this Consent Decree to resolve this action, and stipulate as follows:

1. Defendant Commonwealth of Virginia is obligated to comply with UOCAVA which, following the Court's Order, has been amended by the Military and Overseas Voter Empowerment Act, Pub. L. 111-84, §§ 577 to 582, 583(a), 584 to 587, 123 Stat. 2318 (2009) ("MOVE Act").

2. The adoption of certain monitoring, reporting, and training procedures for a limited period is appropriate to ensure the Defendants' ongoing compliance with UOCAVA.

3. The adoption of additional safeguards is appropriate to ensure ongoing UOCAVA compliance should absentee ballots not be sent by dates prescribed by federal law.

4. This Consent Decree is final and binding as to all issues resolved herein.

WHEREFORE, the parties having freely given their consent, and the terms of the Consent Decree being fair, reasonable, and consistent with the requirements of UOCAVA, it is hereby **ORDERED, ADJUDGED, and DECREED** that:

1. Because UOCAVA enforcement depends on timely and accurate information about the extent of compliance in each of the Commonwealth's political subdivisions, Defendants shall adopt procedures designed to determine Statewide UOCAVA compliance. Accordingly, the Defendants shall:

(a) Beginning the 50th day prior to each federal election, survey each Virginia locality to determine (1) whether the localities have received their printed absentee ballots sufficiently ahead of the 45-day mailing deadline to transmit these ballots as required by UOCAVA, (2) whether the localities anticipate any difficulties or situations that would prevent them from transmitting ballots to stateside uniformed services voters and their spouses and dependents, overseas uniformed services voters and their spouses and dependents, and overseas civilian voters as required by UOCAVA, and (3) whether it would be appropriate for the

Defendants to provide additional support to any Virginia localities to ensure that they meet the appropriate deadlines under UOCAVA;

(b) obtain written or electronic certifications, in a format agreed to by the parties, of the number of absentee ballot applications received in each Virginia locality on or before the 45th day before each federal election from stateside uniformed services voters and their spouses and dependents, overseas uniformed services voters and their spouses and dependents, and overseas civilian voters, entitled to vote pursuant to UOCAVA; the date on which the printed absentee ballots were received in each general registrar's office; the date on which the general registrar began sending absentee ballots to such UOCAVA voters; and the date on which the general registrar completed the sending of absentee ballots to such UOCAVA voters;

(c) compile the data provided by the Virginia localities described in paragraph 1(b) into a spreadsheet format devised in consultation with the United States, and transmit such spreadsheet and forms, by facsimile or other electronic means, to counsel for the United States no later than 5:00 pm on the 44th day before each federal election;

(d) forward to counsel for the United States copies of the written or electronic report from the local electoral boards to the State Board of Elections required under Va. Code Ann. §24.2-612 immediately upon receipt of said report;

(e) obtain written or electronic certifications, in a format agreed to by the parties, of the number of absentee ballot applications received in each Virginia locality after the 45th day and on or before the 30th day before each federal election from stateside uniformed services voters and their spouses and dependents, overseas uniformed services voters and their spouses and dependents, and overseas civilian voters, entitled to vote pursuant to UOCAVA; the

date on which the general registrar began sending absentee ballots to such UOCAVA voters; and the date on which the general registrar completed the sending of absentee ballots to such UOCAVA voters;

(f) compile the data provided by the Virginia localities described in paragraph 1(e) into a spreadsheet format devised in consultation with the United States, and transmit such spreadsheet and forms, by facsimile or other electronic means, to counsel for the United States no later than 5:00 pm on the 29th day before each federal election;

(g) certify in writing to counsel for the United States that all of the data reported pursuant to paragraph 1 of this Decree is accurate to the best of its knowledge.

2. Prior to each federal election cycle, Defendants shall use all reasonable effort to train at least one election official from each local electoral board or general registrar's office in Virginia on the requirements of UOCAVA, as amended by the MOVE Act, and the need to send absentee ballots to UOCAVA voters in a timely manner. Such training shall include instructions on the provisions of this Consent Decree, including the monitoring and reporting requirements, and of all Virginia laws and procedures governing voting by UOCAVA voters, including those pertaining to use of the Federal write-in absentee ballot ("FWAB"). Defendants shall provide copies of such training materials to counsel for the United States prior to their use for training Virginia local election officials.

3. If, during the time period covered by this Consent Decree, it becomes apparent that any general registrar will be unable to transmit regular absentee ballots to UOCAVA voters by the 45th day before a federal election as required by the MOVE Act, the Defendants shall ensure that each UOCAVA voter entitled to an absentee ballot shall be sent a FWAB, which shall be transmitted no later than the 45th day before the federal election. The FWAB shall be

accompanied by instructions for completing and returning it, and a complete and accurate listing of relevant candidates, offices, and ballot propositions for which the voter is eligible to vote, if available, as well as instructions for acquiring such information via the internet and toll-free telephone access. The Defendants shall further ensure that regular absentee ballots are sent to affected voters as soon as practicable.

4. For all Virginia localities that transmitted absentee ballots to stateside uniformed services voters and their spouses and dependents, overseas uniformed services voters and their spouses and dependents, and overseas civilian voters later than UOCAVA's deadlines in 2008 and 2010, the Defendants shall conduct reviews of their operational procedures to determine the sources of their failures, and shall address any failures identified with appropriate training, to be developed in consultation with the Department of Justice.

5. The monitoring, reporting, and training provisions contained in Paragraphs 1 and 2 shall remain in effect through December 31, 2012, unless extended by written agreement of the parties.

6. The Defendants shall submit the changes resulting from this Consent Decree for review under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c.

7. Nothing in this Consent Decree shall be construed as waiving any of the Commonwealth of Virginia's obligations under UOCAVA or the MOVE Act.

8. The Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Consent Decree.

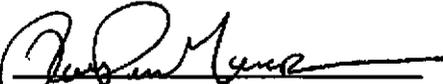
Date: ~~December~~ 10, 2010

Respectfully submitted,

FOR THE UNITED STATES:

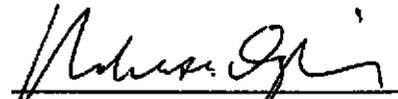
THOMAS E. PEREZ  
ASSISTANT ATTORNEY GENERAL

NEIL H. MACBRIDE  
UNITED STATES ATTORNEY

By:   
ROBIN PERRIN MEIER  
Assistant United States Attorney

T. CHRISTIAN HERREN, JR.  
REBECCA J. WERTZ  
RICHARD DELLHEIM  
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United States Department of Justice  
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richard.dellheim@usdoj.gov  
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FOR DEFENDANTS:

  
ROBERT A. DYBING  
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100 Shockoe Slip  
Richmond, Virginia 23219  
804-698-6248 direct dial  
804-780-1813 facsimile  
rdybing@t-mlaw.com

ACCEPTED AND AGREED:

  
COMMONWEALTH OF VIRGINIA  
STATE BOARD OF ELECTIONS

**SO ORDERED**

  
Richard L. Williams  
United States District Judge