

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

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	Case No. 12-CV-197
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 David G. Deininger, Michael Brennan, Gerald C. Nichol, Thomas Barland, and Thomas Cane 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 alleges violations of UOCAVA arising from the failure to transmit absentee ballots to absent uniformed services voters and overseas voters from at least 65 Wisconsin municipalities by the 45th day before the April 3, 2012 presidential preference primary election. Absent corrective action, some UOCAVA voters from Wisconsin will not be provided 45 days to receive, mark, and submit their ballots in time to have those ballots counted in the April 3, 2012 presidential preference primary 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 April 3, 2012 presidential preference primary election and subsequent 2012 Federal elections. 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 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. Pursuant to Wisconsin law, municipal clerks in 1,851 local jurisdictions are responsible for transmitting absentee ballots to absent uniformed services and overseas voters in accordance with UOCAVA. WIS. STAT. § 7.15(1)(cm).

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 David G. Deininger 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 Michael Brennan, Gerald C. Nichol, Thomas Barland, and Thomas Cane 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). Wisconsin did not seek or obtain a hardship exemption for the April 3, 2012 Federal primary election.

9. On April 3, 2012, the State will conduct a Federal primary election, a presidential preference primary.

10. Municipalities of the State received timely requests for absentee ballots on or before the 45th day prior to the April 3, 2012 presidential preference primary election from voters who are entitled to vote pursuant to the provisions of UOCAVA.

11. The deadline for transmission of absentee ballots to UOCAVA voters who had requested them at least 45 days before the April 3, 2012 presidential preference primary election was February 18, 2012.

12. Under Wisconsin law, municipal clerks 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 February 16, 2012, 47 days in advance of the April 3, 2012 presidential preference primary election. WIS. STAT. § 7.15(1)(cm).

13. Absentee ballots from UOCAVA voters must be postmarked by election day and received by a municipal clerk no later than 4 p.m. on the Friday after election day in order to be counted. WIS. STAT. §§ 7.515(3); 6.22 (5); 6.24 (7). For the April 3, 2012 presidential preference primary, the receipt deadline is April 6, 2012.

14. On March 8 and 9, 2012, the G.A.B. provided a preliminary report of compliance with the 45-day transmittal deadline of February 18, 2012 for UOCAVA ballots, based on the response of 1,197 of the State's 1,851 municipalities. On March 14, 2012, the G.A.B. supplemented its preliminary report to include the response of an additional 263 municipalities, and on March 21, 2012, the G.A.B. provided a second supplemental report to correct information and to report additional data.

15. According to the G.A.B.'s preliminary reports received through March 21, 2012, at least 65 Wisconsin municipalities did not transmit ballots by the 45-day transmittal deadline of February 18, 2012, to UOCAVA voters who requested ballots by that date (hereinafter "late-

transmittal municipalities”). According to the G.A.B., as of March 21, 2012, 229 UOCAVA ballots were sent past the 45-day transmittal deadline. One hundred and ten (110) ballots were transmitted between February 20 and 24, 2012, two to seven days past the deadline. One hundred (100) ballots were transmitted between February 25 and March 3, 2012, over a week past the deadline. Thirteen ballots were transmitted between March 5 and 10, 2012, over two weeks past the deadline. Six ballots were transmitted after March 13, 2012, over three weeks past the 45-day deadline.

16. As of March 21, 2012, three hundred and fifty (350) of the State’s 1,851 municipalities have not confirmed whether they received requests for absentee ballots from UOCAVA voters, or whether ballots were sent to those voters who submitted timely requests on or before the 45-day transmittal deadline of February 18, 2012 (hereinafter “non-reporting municipalities”).

17. The failure to transmit absentee ballots to UOCAVA voters who requested them by February 18, 2012, the 45th day before the April 3, 2012 presidential preference primary election, constitutes a violation of Section 102(a)(8)(A) of UOCAVA, 42 U.S.C. § 1973ff-1(a)(8)(A).

18. In order to avoid the burdens, delays, and uncertainties of litigation and to efficiently and expeditiously promote the parties’ shared goal of ensuring that Wisconsin’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 April 3, 2012 presidential preference primary election, the parties agree that this Court should enter an order that extends the deadline for receipt of ballots from UOCAVA voters in all late-transmittal municipalities and non-reporting municipalities.

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) The deadline for receipt of ballots from UOCAVA voters for the April 3, 2012 presidential preference primary election is extended beyond April 3, 2012 by the total number of days past February 18, 2012 that each late-transmittal municipality transmitted the requested ballots. However, for those late-transmittal municipalities that transmitted UOCAVA ballots one to three days past the 45-day deadline, the deadline for receipt of ballots from UOCAVA voters is April 6, 2012. Absentee ballots from all UOCAVA voters in late-transmittal municipalities that are executed and sent by April 3, 2012, and received by the close of business on the date of the applicable extended receipt deadline, will be accepted and tabulated in the final presidential preference primary election results. A list of all late-transmittal municipalities and the dates of the applicable extended receipt deadlines is attached as Exhibit 1.
- (2) The deadline for receipt of ballots from UOCAVA voters for the April 3, 2012 presidential preference primary election in any non-reporting municipality that transmitted ballots after the 45-day transmittal deadline is as described in paragraph (1). Within one day of the entry of this Consent Decree, the G.A.B. shall issue a communication to all non-reporting municipalities that (1) orders a report on compliance

within one business day; and (2) notifies non-reporting municipalities that failed to comply with the 45-day transmittal deadline that they shall implement an extension of the ballot receipt deadline as described in paragraph (1) and the notice requirements in paragraph (4) .

(3) Defendants shall take all steps necessary to ensure that all timely-requested UOCAVA ballots, including Federal Write-in Absentee Ballots, are counted as validly-cast ballots in the April 3, 2012 presidential preference primary election, provided such ballots are executed and postmarked or show a dated endorsement of receipt by another agency of the United States government by April 3, 2012, are received by the date of the applicable extended receipt deadline, and are otherwise valid. Provided, however, election results for the April 3, 2012 presidential preference primary election may be formally certified by late-transmittal municipalities if the number of outstanding absentee ballots from UOCAVA voters could not mathematically alter the outcome of the election, subject to amendment or re-certification to add any votes from any ballots returned by the extended receipt deadline.

(4) Defendants shall take all steps necessary to ensure that any affected UOCAVA voters for whom the State or late-transmittal municipalities have electronic mail contact information are contacted by electronic mail to notify those voters that if they have not yet received their

ballots, then they may choose to receive their ballots for the April 3, 2012 presidential preference primary election by telefacsimile or electronic mail, instead of by postal mail. If the State or late-transmittal municipalities lack electronic mail contact information for affected voters, but do have telefacsimile contact information for such voters, Defendants shall ensure that the notification required by this paragraph is provided by telefacsimile. The notice shall, at minimum: (a) explain that the deadline for the ballot to be executed and sent is April 3, 2012; (b) explain that the deadline for receipt of the ballot has been extended to the applicable extended receipt deadline; (c) explain the rules for counting the ballots referenced in paragraph (5); and (d) provide appropriate contact information at the G.A.B. for assistance. Non-reporting municipalities that did not transmit ballots by February 18, 2012 to UOCAVA voters who requested ballots by that date are also subject to the provisions of this paragraph.

- (5) To ensure that UOCAVA voters who received a ballot by mail and by email will have their ballot validly counted, the Defendants shall establish a procedure providing which ballot shall be counted if both ballots are returned, and notify all UOCAVA voters of these rules.
- (6) Upon entry of this Consent Decree, Defendants 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 by



this agreement, and coordinate with FVAP as necessary to facilitate such notice.

- (7) Upon the entry of this Consent Decree, Defendants shall take the following steps to endeavor to give affected voters notice of the contents of this agreement: (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. The release shall also be 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 ([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 in certain municipalities within the State; (b) notify UOCAVA voters that they may choose to receive their ballots for the April 3, 2012 presidential preference primary election by telefacsimile or electronic mail; and (c) provide appropriate contact information at the G.A.B. for assistance. Defendants shall also prepare and distribute written public service

announcements describing this Consent Decree for broadcast on radio and television networks, including but not limited to the media described above.

(8) Defendants shall provide a report to counsel of record for the United States no later than May 18, 2012, concerning the number of UOCAVA absentee ballots, by municipality, received and counted for the April 3, 2012 presidential preference primary election. The report will set forth the following information, by municipality, 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 municipalities before the close of business on April 6, 2012, and counted;
- b. The number of absentee ballots from UOCAVA voters received and counted after the close of business on April 6, 2012, but prior to the close of business on the date of the applicable extended receipt deadlines;
- c. The number of absentee ballots from UOCAVA voters received later than the close of business on the date of the applicable extended receipt deadline for all of the affected municipalities; and
- d. The number of absentee ballots from UOCAVA voters that were not counted in the April 3, 2012 presidential preference primary election, for reasons other than late receipt, and the reasons such ballots were not counted.

(9) To ensure Wisconsin's compliance with UOCAVA for the remaining 2012 Federal elections, Defendants shall gather the following information and report it to counsel of record for the United States:

a. Beginning June 1, 2012, survey each Wisconsin municipality to determine, for the remaining 2012 Federal elections: (1) whether each municipality has the technical capacity to transmit all requested ballots by the requested method of transmission; (2) whether any municipality anticipates difficulties or a situation that would prevent it from transmitting all requested ballots to UOCAVA voters by the requested method of transmission and by the appropriate deadline; (3) what measures any such municipality will implement to address any difficulties or obstacles to transmitting all requested ballots to UOCAVA voters by the requested method and by the appropriate deadline; and (4) whether it would be appropriate for Defendants to provide additional support to any municipality to ensure that it meets the appropriate deadlines. Where additional support to the municipalities is appropriate, Defendants shall provide it. Defendants shall provide the results of their survey to counsel for the United States in a format agreed to by the parties no later than 5:00 pm Central time on the 48th day before each Federal election;

b. By the 48<sup>th</sup> day prior to each Federal election, survey each county clerk in Wisconsin to determine whether each municipality has received a sufficient number of printed absentee ballots sufficiently ahead of the 45-day mailing deadline to transmit those ballots as required by UOCAVA. Defendants shall provide the results of this survey to counsel for the United States no later than 5:00 pm Central time on the 47<sup>th</sup> day before each Federal election;

c. By the 43<sup>rd</sup> day prior to each Federal election, obtain written or electronic certifications, in a format agreed to by the parties, of: (1) the number of absentee ballot applications received by each municipality on or before the 45<sup>th</sup> day before each Federal election from any voter entitled to vote pursuant to UOCAVA and the method of transmission requested; (2) the date on which the municipality began sending absentee ballots to those UOCAVA voters; (3) the date on which and method of transmission by which the municipality completed sending those absentee ballots; and (4) an affirmative declaration that all UOCAVA ballots requested by the 45<sup>th</sup> day were transmitted by the 45<sup>th</sup> day by the requested method of transmission;

d. Compile the data provided by the municipalities described in paragraph (9)(c) above into a spreadsheet format

devised in consultation with the United States and transmit the spreadsheet electronically to counsel for the United States no later than 5:00 pm Central time on the 41st day before each Federal election;

e. Certify in writing to counsel for the United States that all of the data reported pursuant to paragraph (9)(c) of this Supplemental Decree is accurate to the best of their knowledge;

f. Obtain written or electronic certifications, in a format agreed to by the parties, of: (1) the number of absentee ballot applications received by each municipality after the 45th day and on or before the 30th day before each Federal election from any voter entitled to vote pursuant to UOCAVA and the method of transmission requested; and (2) the date on which and method of transmission by which the municipality sent the requested ballots; and (3) an affirmative declaration that all UOCAVA ballots requested after the 45th day and on or before the 30th day were transmitted promptly by the requested method of transmission;

g. Compile the data provided by the municipalities described in paragraph (9)(f) above into a spreadsheet format devised in consultation with the United States and transmit the spreadsheet electronically to counsel for the United States no

later than 5:00 pm Central time on the 28th day before each Federal election; and

h. Certify in writing to counsel for the United States that all of the data reported pursuant to paragraph (9)(f) of this Supplemental Decree is accurate to the best of their knowledge.

- (10) The Defendants shall take such actions as are necessary to ensure that UOCAVA voters shall have the full opportunity to vote guaranteed by UOCAVA in future Federal elections, including determining the cause of the late mailed ballots and taking any administrative, legislative, or other actions necessary to prevent future violations arising from the State's election calendar or practices of the State, counties, or municipalities. The parties shall confer on the progress of these efforts, and Defendants shall provide a status report to the United States by April 1, 2013.

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 UOCAVA through April 30, 2013. For good cause shown, any party may move to extend the consent decree or to reopen the case.

The undersigned agree to entry of this Consent Decree on March 23, 2012:

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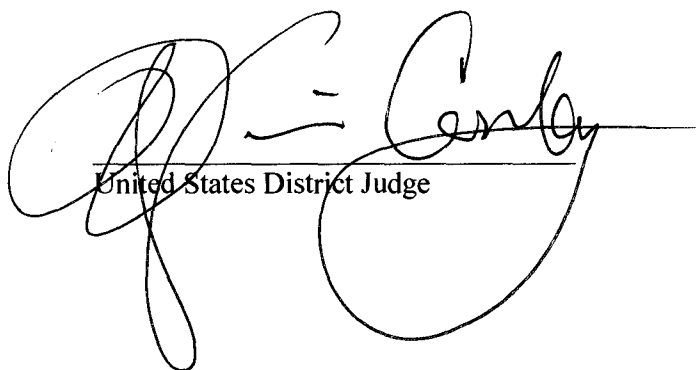
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SO ORDERED this 23<sup>rd</sup> day of March, 2012.

  
United States District Judge



## Exhibit 1: Late-Transmitting Municipalities

Municipality	County	Timely Requested UOCAVA Ballots Sent After 45-Day Transmittal Deadline: February 18, 2012	Date on Which Ballots were Transmitted	Days Past the Transmittal Deadline	Extended Ballot Receipt Deadline
Village of Friendship	Adams County	1	03/05/2012	16	04/19/12
City of Barron	Barron County	3	02/23/2012	5	04/08/12
Town of Barron	Barron County	1	03/08/2012	19	04/22/12
Town of Stanley	Barron County	2	2/27/2012	9	04/12/12
Town of Belvidere	Buffalo County	2	02/21/2012	3	04/06/12
Town of Sherman	Clark County	2	02/22/2012	4	04/07/12
Town of Worden	Clark County	2	03/01/2012	12	04/15/12
City of Verona	Dane County	7	03/01/2012	12	04/15/12
Town of Blue Mounds	Dane County	3	03/02/2012	13	04/16/12
Town of Perry	Dane County	2	02/27/2012	9	04/12/12
Town of Sun Prairie	Dane County	1	03/06/2012	17	04/20/12
Village of Blue Mounds	Dane County	1	03/02/2012	13	04/16/12
Village of Mazomanie	Dane County	2	02/21/2012	3	04/06/12
Village of Mount Horeb	Dane County	6	02/23/2012	5	04/08/12
City of Mayville	Dodge County	1	02/20/2012	2	04/06/12
Town of Oakland	Douglas County	1	02/25/2012	7	04/10/12
Village of Superior	Douglas County	1	03/01/2012	12	04/15/12
Town of Brunswick	Eau Claire County	1	02/23/2012	5	04/08/12
Town of	Eau Claire	1	03/07/2012	18	04/21/12

Municipality	County	Timely Requested UOCAVA Ballots Sent After 45-Day Transmittal Deadline: February 18, 2012	Date on Which Ballots were Transmitted	Days Past the Transmittal Deadline	Extended Ballot Receipt Deadline
Drammen	County				
Village of Fall Creek	Eau Claire County	1	03/08/2012	19	04/22/12
Town of Marshfield	Fond Du Lac County	2	02/22/2012	4	04/07/12
Town of Taycheedah	Fond Du Lac County	1	02/22/2012	4	04/07/12
Town of Cradon	Forest County	1	03/01/2012	12	04/15/12
City of Monroe	Green County	6	02/29/2012	11	04/14/12
Town of Albany	Green County	1	02/21/2012	3	04/06/12
Town of Garfield	Jackson County	1	02/22/2012	4	04/07/12
City of Waterloo	Jefferson County	1	03/07/2012	18	04/21/12
Town of Koshkonong	Jefferson County	1	03/15/2012	26	04/29/12
City of Kenosha	Kenosha County	55	02/28/2012	10	04/13/12
City of Tomahawk	Lincoln County	6	02/22/2012	4	04/07/12
Town of Maple Grove	Manitowoc County	1	02/20/2012	2	04/06/12
Town of Meeme	Manitowoc County	1	02/24/2012	6	04/09/12
City of Wausau	Marathon County	19	02/20/2012	2	04/06/12
Town of Green Valley	Marathon County	2	02/26/2012	8	04/11/12
Town of Maine	Marathon County	2	03/07/2012	18	04/21/12
Village of Whitefish Bay	Milwaukee County	10	02/20/2012	2	04/06/12
Town of Greenfield	Monroe County	1	02/23/2012	5	04/08/12

Municipality	County	Timely Requested UOCAVA Ballots Sent After 45-Day Transmittal Deadline: February 18, 2012	Date on Which Ballots were Transmitted	Days Past the Transmittal Deadline	Extended Ballot Receipt Deadline
Town of Abrams	Oconto County	3	3/15/2012	26	04/29/12
City of Gillett	Oconto County	1	03/05/2012	16	04/19/12
Town of Doty	Oconto County	1	02/20/2012	2	04/06/12
Town of Ellington	Outagamie County	1	02/29/2012	11	04/14/12
Town of Freedom	Outagamie County	4	02/20/2012	2	04/06/12
Town of Hortonia	Outagamie County	2	02/28/2012	10	04/13/12
Town of Saukville	Ozaukee County	1	02/29/2012	11	04/14/12
Village of Saukville	Ozaukee County	2	02/20/2012	2	04/06/12
Town of Hartland	Pierce County	1	03/05/2012	16	04/19/12
Town of New Hope	Portage County	1	02/28/2012	10	04/13/12
Town of Norway	Racine County	1	03/13/2012	24	04/27/12
City of Baraboo	Sauk County	2	02/27/2012	9	04/12/12
Village of Lake Delton	Sauk County	1	03/01/2012	12	04/15/12
Town of Plymouth	Sheboygan County	4	02/23/2012	5	04/08/12
Town of Scott	Sheboygan County	4	02/28/2012	10	04/13/12
City of Westby	Vernon County	1	03/13/2012	24	04/27/12
Town of Manitowish Waters	Vilas County	1	03/10/2012	21	04/24/12
City of Whitewater-	Walworth County	1	02/24/2012	6	04/09/12

Municipality	County	Timely Requested UOCAVA Ballots Sent After 45-Day Transmittal Deadline: February 18, 2012	Date on Which Ballots were Transmitted	Days Past the Transmittal Deadline	Extended Ballot Receipt Deadline
Main					
Town of Madge	Washburn County	2	03/03/2012	14	04/17/12
City of Hartford-Main	Washington County	1	03/01/2012	12	04/15/12
Town of Trenton	Washington County	1	03/02/2012	13	04/16/12
City of New Berlin	Waukesha County	18	02/24/2012	6	04/09/12
City of Oconomowoc	Waukesha County	13	02/22/2012	4	04/07/12
Town of Eagle	Waukesha County	3	02/20/2012	2	04/06/12
Town of Ottawa	Waukesha County	2	02/24/2012; 03/07/2012	18	04/21/12
City of New London	Waupaca County	1	03/01/2012	12	04/15/12
Town of Helvetia	Winnebago County	3	02/22/2012	4	04/08/12
Village of Winneconne	Winnebago County	1	02/20/2012	2	04/06/12