

## MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”) is entered into between the United States of America, through the Civil Rights Division of the United States Department of Justice (“Department”), and the State of California, through the Office of the Secretary of State (“Secretary”).

### Statement of the Parties

The Department and the Secretary hereby recognize the following:

1. In the Help America Vote Act of 2002 (“HAVA”), 42 U.S.C. § 15301 et seq., Congress set forth in Title III certain uniform and nondiscriminatory election technology and administration requirements for States in the administration of elections for federal office.
2. As of this date, the United States of America has provided the State of California with \$348,900,661 in federal funds for purposes of assisting California's compliance with Title III of HAVA. This includes \$264,237,124 in funds under Section 251 of HAVA, \$57,322,707 under Section 102 of HAVA, and \$27,340,830 under Section 101 of HAVA.
3. Section 303(a) of HAVA, 42 U.S.C. § 15483(a), requires each State with voter registration requirements for elections for federal office to implement, through the chief State elections official, a single, uniform, official, centralized, interactive computerized statewide voter registration list. HAVA requires the list to be defined, maintained and administered at the State level, to contain the name and registration information of every legally registered voter in the State, and to assign a unique identifier to each legally registered voter in the State.
4. Section 401 of HAVA, 42 U.S.C. § 15511, provides the Department with enforcement authority for the election technology and administration requirements of Title III, including the statewide voter registration list requirements of Section 303(a).
5. The Secretary, as the chief elections official of the State of California, is principally responsible for the implementation of the statewide voter registration list requirements of Section 303(a) of HAVA in California. Calif. Elec. Code §§ 10, 2168; Calif. Gov. Code § 12172.5.
6. The statewide voter registration list requirements of Section 303(a) will become effective with regard to California on January 1, 2006, since California received a waiver until such date from the United States Election Assistance Commission, pursuant to 42 U.S.C. § 15483(d)(1)(B).

7. On January 11, 2005, the Office of the Secretary sent a letter to the Department seeking its guidance with regard to California's proposed plan for compliance with the statewide voter registration list requirements of Section 303(a). This proposal included a plan for interim short term compliance with these requirements by January 1, 2006 through modification of the State's existing CalVoter voter registration system, as well as a plan for long term compliance with Section 303(a) through development and implementation of a new VoteCal voter registration system to be completed and operational after the January 1, 2006 effective date. Following receipt of the letter, the Department expressed to the Office of the Secretary that its initial proposal did not comply with Section 303(a) of HAVA.

8. There was a lack of adequate planning and action by the prior leadership of the Office of the Secretary before January 2005 in the development and implementation of a statewide voter registration list that would comply with Section 303(a) of HAVA. There were also disruptive circumstances in the operations of the Office of the Secretary of State, including the resignation of the previous Secretary of State on February 2, 2005 and the subsequent appointment and legislative confirmation on March 30, 2005 of the current Secretary. The actions of the prior leadership of the Office of the Secretary placed the State in imminent danger of not having a HAVA-compliant statewide voter registration system in place by the January 1, 2006 deadline for compliance with Section 303(a), and have made it impossible for the State to meet the requirements by January 1, 2006 in the optimum manner desired by the State.

9. The Department and the Secretary have been engaged in extensive discussions since the Secretary's initial January 11, 2005 contact with the Department. These discussions have been aimed at achieving California's interim compliance with the requirements of Section 303(a) by January 1, 2006, using an enhanced Calvoter statewide voter registration system, pending development and completion of the new VoteCal statewide voter registration system designed by the State for optimum compliance with Section 303(a). During this time, the Secretary has been very open and cooperative with the Department and has expended significant effort in working toward a plan for compliance with Section 303(a).

10. It is the intent of the Secretary and the Department that the Secretary: (a) immediately complete development and begin implementation of a short term interim strategy for compliance by January 1, 2006 with all requirements of Section 303(a) to the greatest extent technologically and procedurally possible; and (b) as soon as practicable, secure all necessary State approvals to complete development and implementation of a longer term solution for replacing the interim system with a new permanent statewide voter registration system for compliance with Section 303(a).

### **Terms of Agreement**

NOW, THEREFORE, for full and adequate consideration given and received, the Department and the Secretary agree as follows:

1. The State of California, through the California Secretary of State, the State's chief elections official, agrees to complete development and begin implementation of the interim plan for compliance with the statewide voter registration list requirements of Section 303(a) of HAVA as set forth in "Implementation of California's Interim HAVA Solution Proposed Plan v 4.2" dated October 11, 2005 ("Plan v 4.2")(Attachment A), draft regulations (Attachment B), Calvoter Interim Enhancements Feasibility Study Report (FSR) dated September 26, 2005 (Attachment C), and Calvalidator Interim Enhancements FSR dated September 26, 2005 (Attachment D), no later than January 1, 2006. The proposed plan set forth in Plan v 4.2 and implementing regulations provides, among other things, for the following:

(a) All county voter registration lists, including both active and inactive voters, will be merged into CalVoter to become the official statewide voter registration list for elections for federal office as of January 1, 2006, to be used to determine eligibility to vote, issuance of ballots and whether or not to count provisional ballots;

(b) The Secretary will promulgate a set of data exchange standards to which all counties must adhere in submitting information to CalVoter;

(c) Each registered voter in the State will be identified through a unique identifier number generated from the voter's California driver's license/California ID number (where the registrant has such number), the last four digits of the voter's federal social security number (where the registrant does not have a driver license or state ID number), or other combination of information designed to produce the same unique identifier each time a person registers to vote (for persons who do not have a driver license, state ID or social security number);

(d) Counties will be required to keep information in their election management systems, which they will upload to CalVoter on a regular basis, concerning, among other things, a registrant's vote history, list maintenance activities, the registrant's unique identifier number and whether that unique identifier has been verified against state driver license/ID number records or federal social security records, whether the registrant is a first-time registrant by mail covered by HAVA's identification requirements and whether those identification requirements have been satisfied;

(e) Specific timetables and schedules are set forth governing State and county actions with regard to registration list updates, duplicate checking and list maintenance;

(f) Modifications will be made to the existing CalValidator system, which provides State and county election officials access to California DMV records for purposes of verification of registrants' identification information, to enable real-time access to such information as well as, where necessary, access through DMV to federal Social Security Administration (SSA) records (including prompt conclusion of the agreement with SSA to establish the necessary connection);

(g) Computer interfaces will be modified or constructed to enable access by state and local election officials to state death records of the Department of Health Services and state felony records of the California Department of Corrections for purposes of list maintenance;

(h) The State will utilize the Postal Service's National Change of Address service to conduct monthly checks of address changes that will be transmitted to counties for registration list updates (except during the three months before an election for federal office);

(i) The State will design and implement automated and other processes to monitor county compliance with the statewide voter registration list requirements and will take specific action to secure county compliance where necessary;

(j) Counties will certify compliance with all pertinent voter registration list requirements following each election for federal office conducted in the State.

2. In order to implement Plan v 4.2 throughout the State and to ensure compliance with Plan v 4.2 by county elections officials, the Secretary agrees to begin immediately the process required by State law for promulgation and implementation of the draft regulations in Attachment B. The Secretary agrees to make all best efforts to ensure such regulations are in place as soon as practicable, and in no event later than December 31, 2005.

3. In order to obtain full compliance with Section 303(a) and this Agreement, the State agrees to use HAVA funds to replace any county election management systems in California which cannot comply with Plan v 4.2, its implementing regulations and the data exchange standards required by Plan v 4.2, by no later than the June 2006 election for federal office (as set forth in Plan v 4.2). The State currently anticipates that only a small number of county election management systems may be non-compliant with the data exchange standards. While these counties are currently part of the Calvoter network, their election management systems may not be able to maintain all of the data required by Plan v 4.2, its implementing regulations, and the data exchange standards.

4. The Secretary agrees to develop and implement the new VoteCal statewide voter registration system as set forth in the VoteCal FSR, submitted to the California Department of Finance on July 15, 2005 (Attachment E), as finally approved by the appropriate State authorities in accordance with State law. The State agrees to make all best efforts to complete the VoteCal development and implementation process expeditiously and in a time frame shorter than contemplated by the FSR, particularly in view of the progress made during the development of the interim Calvoter solution.

5. The Department agrees that, if the Secretary (a) fully implements the Plan v 4.2 interim statewide voter registration database plan as described in Attachments A to D, and puts into effect the implementing regulations in Attachment B, both according to the time schedule set forth above and (b) develops and fully implements the VoteCal

statewide voter registration system as proposed in Attachment E, the Department will refrain from initiating federal court litigation to enforce the requirements of Section 303(a) of HAVA against the State.

6. The Secretary agrees to take the following actions to advise the Department of the State's progress in carrying out the terms of this Agreement:

(a) Report to the Department on a weekly basis until January 1, 2006 and on a monthly basis thereafter, in writing or through personal report from Office of the Secretary staff, concerning progress in implementing Plan v 4.2 and its related regulations and in development and implementation of VoteCal;

(b) Advise the Department within 24 hours in writing as well as by personal contact, of any occurrence which may give rise to noncompliance with any term of this Agreement.

7. The Secretary agrees to retain any and all records concerning the subject matter of this Agreement during the term of this Agreement. The Secretary further agrees that the Department shall have access to all such records within a reasonable period of time after request. The Secretary agrees to make appropriate State personnel available to the Department at any and all reasonable times in order to answer questions and provide information concerning compliance issues which arise during the term of this Agreement.

8. To the extent there are any conflicts between the description of the State's plans for its interim statewide voter registration system in the proposed regulations in Attachment B and the Plan v 4.2 overview in Attachment A, the proposed regulations in Attachment B will control as to the content of the parties' agreement.

9. If at any time the Department obtains information that the State is or is about to be in breach of any of the terms of this Agreement, the Department shall advise the Secretary in writing by notice sent to the Secretary by regular mail and facsimile. The Secretary shall have 5 business days following transmission of such notice to respond in writing to the Department. The parties shall thereafter immediately attempt to resolve any issue of potential noncompliance. If the parties are unable to agree on a resolution of the issue, the Department may take appropriate action to enforce the terms of this Agreement or terminate the Agreement and enforce Section 303(a) as provided in Section 401 of HAVA. Nothing in this Agreement shall prevent the Department from taking any actions required to enforce any and all other applicable provisions of HAVA. Any notices sent by the respective parties pursuant to this provision shall be sent to:

For the Department:

Chief  
Voting Section  
Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Ave., N.W., Room 7254-NWB  
Washington, D.C. 20530  
Phone: (800) 253-3931  
Fax: (202) 307-3961

For the Secretary:

Chief  
Elections Division  
Office of the Secretary of State  
1500 11th Street, 5th Floor  
Sacramento, California 95814  
Phone: (916) 657-2166  
Fax: (916) 653-3214

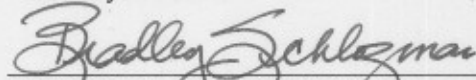
10. This Agreement will remain in effect until such time as the State has completed implementation of the VoteCal statewide voter registration system as set forth in the July 15, 2005 FSR (Attachment E) and as finally approved in accordance with State law.

11. This Agreement is entered into on this 2nd day of November, 2005 and shall be effective immediately.

Agreed to:

For the Department:

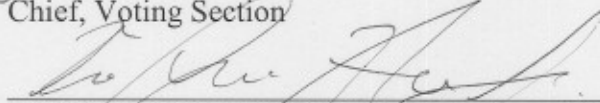
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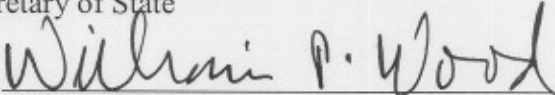
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For the Secretary:

BRUCE McPHERSON  
Secretary of State

By: 

WILLIAM P. WOOD

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