



DISTRICT OF COLUMBIA
BOARD OF ELECTIONS AND ETHICS
WASHINGTON, D.C. 20001-2745

SENT VIA E-MAIL

July 30, 2010

Dr. Clifford L. Stanley
Under Secretary of Defense for Personnel and Readiness
Personnel and Readiness
U.S. Department of Defense
4000 Defense Pentagon
Washington D.C. 20301-4000

Dear Dr. Stanley:

The District of Columbia Board of Elections and Ethics (the Board) respectfully requests an undue hardship exemption waiver to the Military and Overseas Voter Empowerment (MOVE) Act requirement of issuing ballots to voters covered by the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) at least 45 days prior to an election for federal office. This request is based on the date of the District of Columbia's 2010 Primary Election.

The District's election statute dictates that our Primary Election must be held on September 14, 2010, and that our General Election must be held on November 2, 2010.¹ In order to comply with the MOVE Act's 45-day ballot transmission requirement for the General Election, the Board would have to issue absentee ballots to UOCAVA voters by no later than September 18, 2010 -- 4 days after the Primary Election.

Moreover, the Board will not complete the final tabulation of all valid 2010 Primary Election ballots until September 24, 2010, which is the deadline for the receipt of mailed absentee ballots.² The certification of District elections typically takes place 3-5 days after the final tabulation. Once the Board has certified the results of an election, candidates in the election have 7 days to petition for recounts, and voters who participated in the election have 7 days to petition for judicial review of the election. Assuming both that the Board certifies the results of the

¹ See D.C. Official Code § 1-1001.10(a)(3)(A) ("[P]rimary elections of each political party for the office of Delegate to the House of Representatives shall be held on the 1st Tuesday after the 2nd Monday in September of each even-numbered year; and general elections for such office shall be held on the Tuesday next after the 1st Monday in November of each even-numbered year. ")

² See D.C. Mun. Regs. tit. 3, §§ 717.10, 718.10, 720.6 (2010) ("All postmarked absentee ballots shall be postmarked not later than the day of the election, and all mailed (postmarked and non-postmarked) absentee ballots shall be received not later than ten (10) days after the election.")

Primary Election on September 27, 2010, and that there are no petitions for recount or judicial review, the earliest that the Board would be able to finalize ballots for the November 2, 2010 General Election would be October 4, 2010.

It is clear that current statutory mandates make it impossible for the Board to comply with the MOVE Act's 45-day ballot transmission requirement as it applies to the November 2, 2010 General Election. However, the Board recognizes that the purpose of the requirement is to allow UOCAVA voters sufficient time to vote in federal elections. The Board would like nothing more than to provide UOCAVA voters, who have always been at a disadvantage when it comes to receiving absentee ballots, with a full and meaningful opportunity to vote in all District elections. Accordingly, the Board, in conjunction with the District's elected officials, has taken concrete steps to insure that opportunity for this election cycle and beyond.

DIGITAL VOTE BY MAIL

Presently, the District's UOCAVA voters may request that their ballots be sent to them either electronically -- via fax or e-mail -- or by mail. They may also return their marked ballots to the Board in either manner. Ballots returned electronically must be received on Election Day, while ballots returned by mail must be received no later than 10 days after Election Day.

The Board's policy of permitting voted ballots to be transmitted to the Board via fax or e-mail reduces the ballot cycle time for UOCAVA voters relative to transmission by mail. However, neither method allows the voter to cast a secret ballot, and neither is as secure as sending a ballot through the mail.

In an effort to address these limitations, the Board has partnered with the Open Source Digital Voting Foundation (OSDV) to implement a groundbreaking digital "Vote by Mail" (DVBM) ballot transport service. This pilot project, which will launch during the September Primary Election, will enable the Board to digitally deliver ballots to, and accept digitally returned *secret* ballots from, UOCAVA voters.

The DVBM process is as secure as voting by regular mail. The voter will receive a pin through regular mail. Once the voter receives the pin, they can log on to a special application on the Board's website. This public/private key will allow the voter to open up and mark their ballot. The voter will then "seal" the digital security envelope with their key and transmit the data to the Board. The Board will then validate the key from the voter and separate the ballot from the voter. On Election Day, the ballot will be decrypted, printed, and tabulated in the same manner as paper ballots.

DVBM will enable the Board to not only fulfill the purpose of the MOVE Act requirement, but also to permit UOCAVA voters to cast secret ballots in the same manner as those who vote in-person. While the implementation of DVBM is currently planned only for the District's upcoming election cycle, the Board is very eager to move this project from the testing phase to a worked example that can be used by all.

CHANGE IN PRIMARY ELECTION DATE

The Board provided testimony to the Council of the District of Columbia indicating that it could not comply with the MOVE Act's 45-day ballot transmission requirement as long as it is required to conduct the Congressional Primary Election on the date currently established by District law. In response, the Council unanimously adopted the "Sense of the Council Primary Election Timing Resolution of 2010" (Resolution). (Attachment A). The Resolution expresses the Council's understanding "that the District government will need to move the date of its primary elections for federal offices to a date no later than the Tuesday of the first full week of August" beginning in 2012.

Moving the Primary Election to a date on or prior to the Tuesday of the first full week of August would enable the Board to fully comply with the MOVE Act's 45-day ballot requirement, even with respect to ballots transmitted and returned by mail. We are extremely grateful to the Council for its cooperation in the ongoing effort to remove the many obstacles that unfairly impact military and overseas electors' right to vote.

While the Board cannot comply with the 45-day ballot transmission requirement for the November 2010 General Election, we are confident that the measures we have taken will provide UOCAVA voters with sufficient time to cast ballots for this election. In addition, the District's Council has formally acknowledged the need to change the date of the Primary Election so that, going forward, there will be ample voting time for UOCAVA voters, even those who receive and return ballots by regular mail.

If you have any questions or require any additional information, please do not hesitate to contact me at [REDACTED], or at [REDACTED].

Sincerely,



Rokey W. Suleman, II
Executive Director