

November 16, 2011

The Honorable Carol Williams
Senate Minority Leader
Montana Senate
PO Box 200500
Helena, MT 59620-0400

Dear Senator Williams,

Thank you for the work you, your staff, and your colleagues in the Montana Legislature have done to support military and overseas voters. As you know, the Federal Voting Assistance Program (FVAP) is the Department of Defense office charged with implementing the *Uniformed and Overseas Citizens Absentee Voting Act* (UOCAVA), as amended by the 2009 *Military and Overseas Voter Empowerment Act* (MOVE Act). Since the passage of the MOVE Act, State lawmakers and election officials have gone to great lengths to improve voting rules and procedures for military and overseas voters. To date,

- At least 23 States have codified the MOVE Act's 45-day prior transmission requirement into State law, with others pending.
- For the 2010 General Election, 31 States tested web-based tools designed to help military and overseas voters fill out registration and ballot request forms online, and for some States, to access a blank ballot through a secure, online download.
- Six States have adopted the Uniform Law Commission's model legislation.
- All but four States have eliminated witness and notary requirements for military and overseas voters.

These developments will all help expand opportunity for military and overseas voters to participate in U.S. elections. There is, however, still more that can be done. With that in mind, I want to discuss the FVAP Legislative Initiatives. Each year, FVAP contacts the Chief Election Officer and legislative leadership in each State to recommend Legislative Initiatives that, once enacted, will expand opportunity for military and overseas voters to participate in U.S. elections.

As you know, the Montana Legislature recently adopted SB 55 which requires local election officials to transmit ballots to military and overseas voters at least 45 days prior to each federal election. To further expand opportunity for military and overseas voters and to improve their voting experience, FVAP recommends Montana adopt the following measures in statute or regulation:

- **Enact the Uniform Law Commission (ULC) Model Legislation.** The ULC, an interstate commission made up of State legal experts, has presented the "Uniform

Military and Overseas Voters Act” (UMOVA) for adoption by the States. FVAP supports the Commission in this endeavor, and recommends the States adopt the Act. To date, six States have adopted UMOVA. The sheer diversity of individual election laws regarding Uniformed Services and overseas voters is, in and of itself, a serious hindrance to these voters successfully exercising their franchise. Uniformity and standardization of voting laws for the Uniformed Services and overseas voters would substantially ease the burden of compliance, improve voter success, and would help reduce the variation in terms and procedures between States.

- **Extend the period of registration and absentee ballot request validity.** Absentee ballot applications, including the Federal Post-Card Application (FPCA), submitted by military and overseas voters, should be valid for all elections from the date the application is submitted through the next federal general election. While the MOVE Act repealed the prior federal requirement that States send absentee ballots for two general election cycles after the application is made, limiting validity to a single calendar year produces significant problems for military and overseas voters, especially in States with early Presidential Preference Primaries and for special elections. FVAP, therefore, recommends States move to a one general election rule for ballot application FPCA validity. *This Legislative Initiative is new for 2012.*
- **Permit Emergency Authority for State Chief Election Official.** During a period of a declared emergency or other situation where a short time-frame for ballot transmission exists, the Governor, the Chief Election Official, or designated State official should have the authority to designate alternate methods for handling absentee ballots to ensure military and overseas voters have the opportunity to exercise their right to vote. Examples of such emergencies could include natural disasters such as floods, earthquakes, or man-made disasters, such as a fire, power outage or terrorist attack.
- **Enfranchise Citizens Who Have Never Resided in the U.S.** Some voting age children of military and overseas voters have never resided in the U.S. Montana should permit these citizens to vote using their parents’ former addresses.

These recommendations are more thoroughly outlined in the attachment below. I have also included a chart of each State’s adoption of FVAP recommendations.

Please do not hesitate to contact my staff or me. We will be happy to provide research, sample language, or testimony—anything that will assist you in serving military and overseas voters.

Sincerely,

Bob Carey
Director, Federal Voting Assistance Program

Enclosure:

1. 2012 Legislative Initiatives and Sample Language
2. Chart: 2012 Legislative Initiatives by State

cc:

The Honorable Linda McCulloch

The Honorable Jim Peterson

The Honorable Mike Milburn

The Honorable Jon C. Sesso

2012 FVAP Legislative Initiatives for Montana

In addition to the explanation of need for each of the Legislative Initiatives detailed below, draft legislative language is provided. This language is derived from the legislative language provided in the Uniform Military and Overseas Voters Act (UMOVA), drafted by the Uniform Law Commission in June 2010. A complete copy of the model legislation can be found at www.umova.org. A copy of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) as amended by the Military and Overseas Voter Empowerment (MOVE) Act is available at: <http://www.fvap.gov/resources/media/uocavalaw.pdf>.

Note: An updated 55-State /Territory Legislative Initiative comparison chart is available at: (Website address TBD by 15 November 2011).

Adoption of Recommendations of the Uniform Law Commission

The Uniform Law Commission (ULC), an interstate commission made up of State legal experts appointed and elected by their State governments or commissions, has presented the “Uniform Military and Overseas Voters Act” (UMOVA) for adoption by the States. FVAP supports the Commission in this endeavor, and recommends the States adopt the Act. To date, six States have adopted UMOVA. The sheer diversity of individual election laws regarding Uniformed Services and overseas voters is, in and of itself, a serious hindrance to these voters successfully exercising their franchise. Uniformity and standardization of voting laws for the Uniformed Services and overseas voters would substantially ease the burden of compliance, improve voter success, and would help reduce the variation in terms and procedures between States. This model legislation is endorsed by the Alliance of Military and Overseas Voting Rights, the American Bar Association, and the Council of State Governments, as well as being included in the Council’s list of Suggested State Legislation.

Some States currently have statutory provisions that go beyond the recommendations of the UMOVA, providing greater opportunities for military and overseas voters. While FVAP encourages adoption of the UMOVA language for uniformity, care must be taken to avoid regressing by adopting legislation that is less than what is already provided by State law. FVAP and the Uniform Law Commission both stand ready to assist States in legislative drafting to optimize both voter opportunity and standardization. Further information on UMOVA is available at www.umova.org.

Sample Language Notes

DOD, including FVAP and the Defense State Liaison Office staff, as well as the Uniform Law Commission, nationally and in the various states, stand ready to assist States in legislative drafting and passage of UMOVA in the various States to optimize both voter opportunity and minimum standardization.

UMOVA is best passed by minimal amendment to the draft act as a whole, rather than trying to lift the language and place it in various places in a State Code. This is one of those situations

where “the whole is greater than the sum of the parts.” Further information on the UMOVA draft language is available at www.umova.org.

Ballot Application FPCA Validity

This Legislative Initiative has been added for 2012. Absentee ballot applications, including the Federal Post-Card Application (FPCA), submitted by military and overseas voters, should be valid for all elections from the date the application is submitted through the next federal general election. In 2009, the MOVE Act repealed Section 104 of UOCAVA, which had required States to treat absentee ballot applications from military and overseas voters as valid through two general election cycles. Since the repeal, some States have limited the validity of ballot applications to the calendar year in which they are submitted. This is a concern in Presidential election years, when some States hold early primaries and voters need to submit a ballot application in the previous calendar year. FVAP, therefore, recommends States move to a one general election rule for ballot application FPCA validity.

Sample Language

A covered voter who provides an electronic-mail address may request that the voter’s application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies[, including for any runoff elections that occur as a result of such elections]. An election official shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general election.

Emergency Authority for State Chief Election Official

During a period of a declared emergency or other situation where a short time-frame for ballot transmission exists, the Governor, the Chief Election Official, or designated State official should have the authority to designate alternate methods for handling absentee ballots to ensure military and overseas voters have the opportunity to exercise their right to vote. Examples of such emergencies could include natural disasters such as floods, earthquakes, or man-made disasters, such as a fire, power outage or terrorist attack.

Sample Language

If an international, national, state, or local emergency or other situation arises that makes substantial compliance with the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq., impossible or impracticable, as confirmed by the existence of armed conflict involving United States Armed Forces or the mobilization of those forces, including State National Guard and Reserve component members of this state, or by the occurrence of a natural disaster or the existence of a state of emergency, civil unrest, war, or other exigency in a foreign country, or by an official declaration by the governor that a state of

emergency exists, the governor directly, or by delegation to [the state's chief election authority], may prescribe, by emergency order or rule, a special procedure or requirement as may be necessary to facilitate absentee voting by those absent uniformed services voters, or overseas voters directly affected who are eligible to vote in this state. [The state's chief election authority] shall take reasonable steps to provide absent uniformed services voters and overseas voters with timely notice of any special procedure or requirement prescribed under this section.

Enfranchise Citizens Who Have Never Resided in the U.S.

Many U.S. citizens, who have never resided in a State or territory, are not entitled to vote under current State law. These citizens are voting age children of U.S. citizens who are eligible to vote under UOCAVA. Absent the decisions made by these children's parents to reside overseas, these disenfranchised children of military and overseas voters would likely otherwise be allowed to vote. Therefore, FVAP urges that these U.S. citizens be allowed to vote in elections for Federal offices in the State in which either parent is eligible to vote under UOCAVA.

Sample Language

(a) An overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements.

(b) An overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements.

(c) An overseas voter who was born outside the United States, is not described in paragraph (a) or (b), and, except for a state residency requirement, otherwise satisfies this state's voter eligibility requirements, if: (1) the last place where a parent or legal guardian of the voter was, or under this [act] would have been, eligible to vote before leaving the United States is within this state; and (2) the voter has not previously registered to vote in any other state.

(d) In registering to vote, an overseas voter who is eligible to vote in this state shall use and must be assigned to the voting [precinct] [district] of the address of the last place of residence of the voter in this state, or, in the case of a voter described by Section 2(1)(E), the address of the last place of residence in this state of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.