

November 16, 2011

The Honorable Héctor J. Conty Pérez
President
Puerto Rico State Elections Commission
P.O. Box 195552
San Juan, PR. 00919-5552

Dear President Conty,

Thank you for the work you, your staff, and your colleagues in the Puerto Rico 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 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 the 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, Puerto Rico has recently adopted an administrative rule to ensure ballots are transmitted to military and overseas voters at least 45 days prior to a federal election. To further expand opportunity for military and overseas voters and to improve their voting experience, FVAP recommends Puerto Rico adopt the following measures in statute or regulation:

- **Expand electronic transmission options for registration and ballot materials.** Puerto Rico does not allow military and overseas voters to receive their ballot by email or fax, nor does it provide online ballot access. As you know, federal law requires States to offer

at least one form of electronic transmission of ballots to military and overseas voters. FVAP recommends Puerto Rico introduce email and online systems to transmit full ballots to voters. Such online systems would allow voters to download, or “pull,” election materials at their own convenience, in addition to “push” systems like emails with copies of the voter’s ballot attached. For example, “pull” methods allow voters to go to an election website and “pull” or download their ballot. Having both “push” and “pull” electronic transmission is important because some military information systems automatically block emails from non-military third parties or block access to non-government email systems. Further, many military voters do not know their overseas military address before deploying. In addition, Puerto Rico does not allow registration by solely electronic means. Puerto Rico should also exempt military and overseas voters from the wet signature requirement for registration and ballot requests. Forcing military and overseas voters to use often unreliable international postal services puts these voters at a disadvantage. *This Legislative Initiative has been revised for 2012.*

- **Expand the Use of the Federal Write-In Absentee Ballot (FWAB) including voter registration.** Puerto Rico currently will only accept the FWAB as a ballot for federal general elections. Given the inherent delays in sending ballots by mail, the FWAB represents the only ballot readily available for many of these voters. Universal adoption of the FWAB will standardize the “emergency ballot” process for military and overseas voters, reduce confusion as to which form to use, and allow election officials to focus their education on a single form and its processes for timely return.
- **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 that 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.
- **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 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.
- **Permit late registration.** Recently discharged Uniform Service members, their families, and overseas citizens may return to the U.S. in between the registration deadline and the election. These citizens should still be permitted to register even if the registration deadline has passed.
- **Eliminate the witness requirement for UOCAVA balloting materials.** Puerto Rico is one of four states and territories that still require a witness signature on ballot materials.

Witnessing requirements present a real barrier to voting for many military and overseas voters, such as Peace Corp volunteers and other citizens living in remote areas overseas, because identifying witnesses may be difficult.

- **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. Puerto Rico 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's 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

Enclosures:

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

cc:

The Honorable Thomas Rivera-Schatz
The Honorable Jennifer González
The Honorable Jose Luis Dalmau Santiago
The Honorable Héctor Ferrer Ríos

2012 FVAP Legislative Initiatives for Puerto Rico

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).

Email and Online Transmission of Voting Materials

This Legislative Initiative has been revised for 2012. FVAP recommends States employ multiple electronic means to transmit voting materials to, and communicate with, voters. Specifically, each State should offer military and overseas voters multiple electronic means to receive their ballot, including a way to provide (“push”) ballots to voters and a way that allows voters to obtain (“pull”) ballots from specified web servers. An example of “push” means is emailing a PDF of the blank ballot. “Pull” methods allow voters to go to an election website, and after inputting an identification code, “pull” or download their ballot. States should also expand their use of email, social media and online systems to communicate with voters throughout the voting process, including the transmission of registration and ballot request materials.

Email and online capabilities are widely available eclipsing the usefulness of faxing. After a September 2008 visit to military bases in the Middle East, Asia and Europe, a delegation of six State Chief Election Officials reported that “...reliance on fax machines to speed the voting process... is largely unworkable for deployed troops,” and that visited military personnel “indicated a strong preference for, and almost universal access to, email or internet based voting procedures.” Additionally, FVAP’s experience in the 2006 through 2010 election cycle indicates that email or online deliveries alone are insufficient to reach all voters; for example, different military information technology networks block user access to third-party email systems, and the voter’s deployed military email address may not have been known when the Federal Post Card Application was submitted. Conversely, some voters have access to email but not to web surfing services. Providing ballots by both systems substantially improves the likelihood that a voter will be able to receive their ballot electronically.

Sample Language

An absent uniformed services voter or overseas voter may apply for registration and an absentee ballot by electronic transmission, if otherwise qualified to apply for and vote by absentee ballot. An absent uniformed services voter or overseas voter who requests that ballots and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or if offered by the voter’s jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall

transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

Expanded Use of Federal Write-In Absentee Ballot

FVAP continues to encourage and assist Uniformed Service and overseas voters to greatly increase the use of the Federal Write-in Absentee Ballot (FWAB). Given the inherent delays in sending ballots by mail, the FWAB represents the only ballot readily available for many of these voters. Therefore, FVAP recommends States expand the use of the FWAB to include simultaneous registration, ballot request, and voted absentee ballot for federal, State and local offices for the elections required by the MOVE Act: general, primary (including Presidential Preference primary), special, and runoff. In expanding the use of the FWAB in this manner, individually-developed State Write-In Ballots will no longer be needed, and FVAP recommends they be replaced with the FWAB alone. Universal adoption of the FWAB will standardize the “emergency ballot” process for military and overseas voters, reduce confusion as to which form to use, and allow election officials to focus their education on a single form and its processes for timely return.

Sample Language

(1) An absent uniformed services voter or overseas voter may use a Federal Write-In Absentee Ballot, in accordance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff, to vote for all offices in any general, special, primary, or runoff election for Federal, State, or local government office, or a ballot measure.

(2) An absent uniformed services voter or overseas voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by [insert this state’s voter registration deadline for that election]]. [If the declaration is received after that date, it must be treated as an application to register to vote for subsequent elections.]

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 that 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.

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.

Late Registration Procedures

Recently discharged Uniformed Service members and their accompanying families or overseas citizens returning to the U.S., may become residents of a State just before an election, but not in time to register by the State's deadline and vote. The adoption of special procedures for late registration would allow these citizens to register and vote in the upcoming election.

Sample Language

An individual who has been discharged or separated from the Uniformed Services, the Merchant Marine, an accompanying family member, or a citizen who is returning from outside the United States, too late to register by the regular State deadline shall be entitled to register and vote in that election if they so notify the registrar for the address at which they claimed as their residence prior to the discharge or return to the United States before the day of the election, and if they would otherwise have been qualified to register to vote.

Removal of Notarization and Witnessing Requirements

Notarization and witnessing requirements on voter registration applications, ballot requests, and voted ballots present a real barrier to voting for many military and overseas voters. Citizens living in remote areas overseas are hindered because notary services may not exist, or may be prohibitively expensive and difficult to access. While the MOVE Act prohibits States from rejecting ballots or election materials submitted by military and overseas voters for lack of a notary, it does not prohibit States from asking for it. This simply confuses the voter, drives them to find notaries even though not required, and likely disenfranchises many voters who, failing to find a notary, do not send in their ballots believing the State's notary request is legitimate. Similarly, witnessing requirements, especially those that specify the age or citizenship of the witness, may disenfranchise voters who cannot satisfy this requirement due to their location or circumstances. Notarization or witnessing requirements for all absentee balloting materials should be removed, and the voter's signature and date, under the self-administered oath on penalty of perjury, should verify the legitimacy of the voter and the application or ballot.

Sample Language

Notarization is not required for the execution of a document under this [act]. An authentication or witness, other than the declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or this state, or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this [act]. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

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.