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FEDERAL VOTING ASSISTANCE PROGRAM

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Department of Defense
Rosslyn Plaza North
1777 North Kent Street
14th Floor, Suite 14003
Arlington, VA 22209-2162

March 22, 2011

The Honorable David Dewhurst
President of the Senate
Texas State Senate
Capitol Station
PO Box 12068
Austin, TX 78711

Dear Senator Dewhurst,

Thank you for the work you and your State have done to support Texas's military and overseas voters through the Legislative Initiatives recommended by the Federal Voting Assistance Program (FVAP). Election officials nationwide have gone to great lengths to comply with the recently enacted Military and Overseas Voter Empowerment Act of 2009 (MOVE Act), and our previous Legislative Initiative letters were sent before that law was enacted. We believe this letter captures your State's post-MOVE Act changes as we previously coordinated with the elections office. Information available to FVAP indicates that there are 229,890 Uniformed Service members and 95,227 spouses and dependents who claim Texas as their voting residence. Additionally, FVAP estimates there are anywhere from two to four million American citizens residing overseas who claim residency in one of the 55 covered States or Territories, and therefore a portion likely reside in your State.

Despite the improvements in military and overseas voting success brought about by the MOVE Act and State initiatives, preliminary post-2010 election data appears to confirm what we learned after the 2008 election: military and overseas voters still face greater difficulties in successfully casting a ballot than does the general population, and timely delivery and return of ballots appears to be the leading cause of that failure.

From 2008 through 2010, FVAP joined the National Association of Secretaries of State, the National Association of State Election Directors, and many other military and overseas voting stakeholders in advising the Uniform Law Commission's drafting committee on the Uniform Military and Overseas Voters Act (UMOVA). In addition to addressing many specific hurdles identified in previous legislative initiative letters FVAP has sent Texas, UMOVA addresses one of the overriding concerns of military and overseas voters: the confusing and complex national patchwork of laws and regulations governing absentee voting. After a September 2008 visit to military bases in the Middle East, Asia and Europe, a delegation of six State Chief Election Officials stated that the sheer variety of State and local laws imposed on military and overseas voters is of its own right an impediment to their voting, because of the complexity it introduces for the voters and Voting Assistance Officers charged with helping them.

UMOVA's goal is to simplify the myriad absentee voting regulations and procedures into a uniform process common to all 55 States and territories. It also seeks to extend the MOVE Act

provisions to State and local elections, ensuring that service people and citizens overseas have the same rights to participate in electing State and local officials as they have for federal officials. FVAP strongly encourages Texas to adopt UMOVA.

Given that the MOVE Act requires States send ballots to voters at least 45 days before the election and to send them electronically as well as by postal mail, FVAP recommends the expanded use of email and online transmission for all election materials throughout the entire absentee voting process, thereby supplementing fax and postal mail where possible.

FVAP will continue to encourage and assist Uniformed Service and overseas voters to 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 that 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, special, and runoff.

Other initiatives remain crucial to alleviating the problems faced by citizens covered by the UOCAVA, including the elimination of witnessing requirements (notary can no longer be required after passage of the MOVE Act), the authorization for the State Chief Election Official to implement emergency measures, the establishment of late registration procedures, and the enfranchisement of U.S. citizens who have never resided in the United States.

After reviewing Texas's existing election code and procedures, we identified six Initiatives for your legislature to consider during this year's legislative session. These Initiatives are discussed in detail with suggested wording in the enclosed Legislative Initiatives document. Please do not hesitate to contact us for assistance. We would be happy to provide written or in-person testimony to clarify our position on any or all of these initiatives.

Sincerely,

Digitally signed by CAREY ROBERT HARRISON JR 1058129452
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USN, cn=CAREY ROBERT HARRISON JR 1058129452
Date: 2011.09.21 12:35:59 -04'00'

Bob Carey
Director, Federal Voting Assistance Program

Enclosure:
2011 Legislative Initiatives and Sample Language

CC: The Honorable Esperanza "Hope" Andrade
The Honorable Joe Straus

Expanded Use of Federal Write-In Absentee Ballot

UOCAVA citizens should be authorized to use the Federal Write-In Absentee Ballot (FWAB) to vote in general, primary, special, and runoff elections for Federal, State and local offices. When insufficient time exists between the scheduling of a special or runoff election and the set election date, citizens may not receive their State ballots in time to vote. Expanding the use of the FWAB for all elections provides *UOCAVA* citizens a greater opportunity to vote in these elections.

Additionally, the FWAB should be accepted simultaneously as a voter registration application, absentee ballot request, and absentee ballot. This provision will allow this highly mobile population to participate in elections far in advance of a deployment, reassignment or move. Finally, FVAP is recommending a new policy that the FWAB be the only write-in ballot used for Uniformed Services and overseas voters; the authorization and use of both a FWAB and a State Write-In Absentee Ballot introduces greater complexity and opportunity for error for Uniformed Services and overseas voters. Using the single FWAB will allow future technological solutions by FVAP to incorporate State and local races into online FWAB solutions, further extending this franchise opportunity.

Sample Language

(1) Election officials shall permit absent uniformed services voters and overseas voters to use the 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) Election officials shall permit absent uniformed services voters and overseas voters to use the Federal Write-In Absentee Ballot voter declaration as a request for registration and an application for a military-overseas ballot simultaneous with the submission of the Federal Write-In Absentee Ballot, if the request is [received by the later of the 15th day before the election or the last day for other voters in the state to apply for an [absentee ballot] for that election].

Adoption of Recommendations of the Uniform Law Commission

The Uniform Law Commission (ULC) 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*. 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.

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 stands ready to assist States in legislative drafting to optimize both voter opportunity and standardization. Further information on *UMOVA* 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 or designated State official should have the authority to designate alternate methods for handling absentee ballots to ensure *UOCAVA* voters have the opportunity to exercise their right to vote.

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.

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* themselves. Absent the decisions made by these children's parents to reside overseas, these disenfranchised children of *UOCAVA* 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 is eligible to vote in this state if the last place where the voter was, or if then of voting age would have been, eligible to vote before leaving the United States is within this state.

(b) An overseas voter who was born outside the United States and who is not included in subparagraph (a) is eligible to vote in this state if the last place where a parent or 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 if the voter has not previously registered to vote in any other state.

(c) An overseas voter who is eligible to vote in this state shall register to vote using, and be assigned to the voting [precinct/district] of, the address of the voter's last place of residence in this state, or, in the case of a voter eligible under subsection (b), the address of the voter's parent's or guardian's last place of residence in this state.