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FEDERAL VOTING ASSISTANCE PROGRAM

FEDERAL VOTING ASSISTANCE PROGRAM
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March 22, 2011

The Honorable William J. Howell
Speaker, House of Deleg
State of Virginia
P.O. Box 406
Richmond, VA 23218

Dear Speaker Howell,

Thank you for the work you and your State have done to support Virginia'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 35,785 Uniformed Service members and 90,466 spouses and dependents who claim Virginia 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 Virginia, 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 Virginia 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 Virginia's existing election code and procedures, we identified five 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 1098125452
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USN, cn=CAREY ROBERT HARRISON JR 1098125452
Date: 2011.03.21 15:17:44 -04'00'

Bob Carey
Director, Federal Voting Assistance Program

Enclosure:
2011 Legislative Initiatives and Sample Language

CC: Mr. Donald Palmer
Lieutenant Governor William T. Bolling

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FVAP
2011 Legislative Initiatives

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), presented by the Uniform Law Commission in June 2010. A complete copy of the model legislation can be found at www.umova.org.

Email and Online Transmission of Voting Materials

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.

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.

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*. 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.

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 UOCAVA citizens. 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 UOCAVA 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.

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. 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 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.