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FEDERAL VOTING ASSISTANCE PROGRAM

FEDERAL VOTING ASSISTANCE PROGRAM
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Arlington, VA 22209-2162

March 22, 2011

The Honorable Jeffrey V. Kessler
Acting Senate President
State of West Virginia
Building 1
State Capitol Complex
Charleston, WV 25305

Dear Senator Kessler,

Thank you for the work you and your State have done to support West 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 9,337 Uniformed Service members and 1,242 spouses and dependents who claim West 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 West 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 West 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 West Virginia'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.1066129452
DN: c=US, o=U.S. Government, ou=DoD, ou=PKI, ou=USN, cn=CAREY.ROBERT.HARRISON.JR.1066129452
Date: 2011.03.31 12:26:04 -04'00'

Bob Carey
Director, Federal Voting Assistance Program

Enclosure:
2011 Legislative Initiatives and Sample Language

CC: The Honorable Natalie Tennant
The Honorable Richard Thompson

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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.

45-Day Ballot Transit Time

Despite the implementation of Express Mail ballot return for overseas military ballots, significant delays in postal mail delivery of ballots still occurs. For example, while the average military mail delivery time to the Middle East is 11-14 days, this is only to the military post office. Follow on delivery to combat outposts and forward operating bases can add another seven to 10 days to the total transit time. For ships at sea, 20 additional days are not unusual. For ballot return, although ballots were returned in an average 5.2 days from overseas military post-offices using the Express Mail services, the delays to the remote locations discussed above still exist. For overseas citizens, the transition between foreign postal services and the US Postal Service can be complex, generating their own delays.

Ballots, therefore, must be sent 45 days prior to the election, if sent through international mail and overseas military post offices, in order to provide adequate time for voters to receive, vote, and return ballots, with any likelihood that their votes will be successfully received by election officials. Accepting and counting absentee ballots that were cast up to Election Day, but were not received until after the election, would further enfranchise these voters, and FVAP's scoring provides additional points to States that provide such post-Election Day ballot return deadlines up to an additional 15 days. States also receive those additional points if they send ballots more than 45 days before the election.

Sample Language

For any general, special, [presidential preference,] [runoff,]or primary election for federal office; any general, special, [recall,][runoff] or primary election for statewide or state legislative office [or state ballot measure]; any general, special, [recall,] [runoff]or primary election for local government office [or local ballot measure]conducted under [insert state law][for which absentee voting or voting by mail is available for other voters], not later than 45 days before the election the official charged with preparing and distributing ballots and balloting materials in each jurisdiction shall transmit ballots and balloting materials to all absent uniformed services voters and overseas voters who by that date have submitted a valid military-overseas ballot application. If a ballot application from an absent uniformed services voter or overseas voter arrives after the jurisdiction begins transmitting ballots and balloting materials to voters, the official charged with distributing ballots and balloting materials shall transmit these materials to the voter not later than two business days after the application arrives.

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.

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 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. In expanding the use of the FWAB in this manner, individually-developed State Write-In Ballots will no longer be needed, and FVAP recommends that they be replaced with the FWAB alone. Universal adoption of the FWAB will standardize the "emergency ballot"

process for UOCAVA 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*. 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.

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.